(23,807)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1914.

No. 226.

J. A. E. PYLE, TRUSTEE IN BANKRUPTCY OF STEELE, MILLER & COMPANY, APPELLANT,

vs.

THE TEXAS TRANSPORT & TERMINAL COMPANY, COMPAGNIE GENERALE TRANSATLANTIQUE, AND BANK DE MULHOUSE.

APPEAL FROM THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIFTH CIRCUIT.

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UNITED STATES OF AMERICA:

United States Circuit Court of Appeals, Fifth Judicial Circuit.

Pleas and Proceedings Had and Done at a Regular Term of the United States Circuit Court of Appeals for the Fifth Circuit, Begun on Thursday, November 21st, A. D. 1912, at New Orleans, Louisiana, Before the Honorable Don A. Pardee and the Honorable David D. Shelby, Circuit Judges, and the Honorable William B. Sheppard, District Judge.

J. A. E. PYLE, Trustee in Bankruptcy of Steele, Miller & Company, Appellant,

versus

TEXAS TRANSPORT & TERMINAL COMPANY, COMPAGNIE GENERALE TRANSATLANTIQUE, and BANK DE MULHOUSE, Appellees.

Be it remembered, that heretofore, to-wit, on the 10th day of July, A. D. 1912, a transcript of the record of the above styled cause, pursuant to an appeal from the District Court of the United States for the Eastern District of Louisiana, was filed in the office of the Clerk of the said United States Circuit Court of Appeals for the Fifth Circuit, which said transcript was filed and docketed in said Circuit Court of Appeals as No. 2389, as follows:

1

(a)

[226]

UNITED STATES OF AMERICA.

UNITED STATES DISTRICT COURT, EASTERN DISTRICT OF LOUISIANA, NEW ORLEANS DIVISION.

J. A. E. PYLE, TRUSTEE,

Appellant,

versus No. 14,240

TEXAS TRANSPORT & TERMINAL COMPANY, ET ALS.,

Appellees.

Messrs. W. A. Percy, J. A. Lamb and Dufour & Dufour, for J. A. E. Pyle, Trustee, Appellant.

Mr. George H. Terriberry, for the Texas Transport & Terminal Company, and Compagnie Generale Transatlantique, Appellees.

Messrs. Denegre & Blair, for Comptoir d'Escompte de Mulhouse, Paul Chardin, Societe Generale, and Credit Havrais, Appellees.

APPEAL FROM THE United States District Court for the Eastern District of Louisiana, New Orleans Division, to the United States Circuit Court of Appeals for the Fifth Circuit, Returnable Within Thirty (30) Days From the First (1st) Day of March, A. D. 1912, at the City of New Orleans, State of Louisiana.

Extension of Thirty (30) Days' Time From the Return of the Appeal, To-wit From March 31st, 1912, Granted by the Honorable United States Circuit Court of Appeals for the Fifth Circuit.

Extension of Thirty (30) Days' Time From the Return of the Appeal, To-wit, From April 30th, 1912, Granted by the Honorable United States Circuit Court of Appeals for the Fifth Circuit.

Time for Filing the Transcript of Appeal in the Honorable United States Circuit Court of Appeals for the Fifth Circuit, Extended to the Tenth (10th) Day of July, A. D., 1912, as Per Agreements of Counsel, Copied at Pages 1332 and 1336, Respectively, of This Transcript.

TRANSCRIPT OF APPEAL.

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1 BILL AND EXHIBITS.

Filed August 18, 1910.

United States District Court, Eastern District of Louisiana, New Orleans Division.

J. A. E. PYLE, TRUSTEE,

versus No. 14,240

TEXAS TRANSPORT & TERMINAL COMPANY, ET ALS.

To the Honorable the Judge of the United States District Court, Eastern District of Louisiana:

J. A. E. Pyle, a citizen of the State of Mississippi, suing herein as trustee in bankruptcy of Steele, Miller & Company, brings this his bill of complaint against the Compagnie Generale Transatlantique, a corporation created under the laws

of the Republic of France, with its domicile in the City of Paris, France, the Texas Transport & Terminal Company, a corporation created under the laws of the State of New Jersey, but doing business in the City of New Orleans through W. H. Hendren, agent, F. Scheuch & Company, a commercial firm composed of Fred Scheuch and Albert Schilling, of Havre, France, and Bank of Mulhouse, a corporation which your orator is advised is organized under the laws of France, with its domicile at Havre, France, and the other persons against whom process is herein prayed; and thereupon your orator complains and says:

First. That Steele, Miller & Company, a partnership composed of L. C. Steele, J. H. Miller and C. H. G. Linde, was lately doing business in and had its principal place of business at Corinth, in the State of Mississippi, and within the Northern District of Mississippi, that the business of said firm of Steele, Miller & Company consisted of the purchasing and selling of cotton.

Second. That on May 4th, 1910, in the suit No. 123, entitled Knoop, Fabarius & Company, et al., vs. Steele, Miller & Company, in the United States District Court for the Northern District of Mississippi, application was made for an adjudication in involuntary bankruptcy against said
2 firm and for the appointment of a temporary receiver, to take charge of the assets of said firm pending the action of the Court and pending the election of a trustee; that your orator, J. A. E. Pyle, was appointed by the Honorable Judge of the United States District Court for the Northern District of Mississippi, as temporary receiver, in accordance with the prayer of said petition, and that your orator duly qualified as such, all of which will appear more fully from the petition and order filed in said cause and the oath and bond filed by your orator as temporary receiver in the said numbered and entitled cause, all of which are made part hereof as though fully and at length set forth herein, and will be produced at the trial of this cause.

Third. That on the 31st day of May, 1910, in the trial of said cause held in the manner and form prescribed by law, the said firm of Steele, Miller & Company was adjudicated a

bankrupt, and on the 11th day of July, 1910, at the meeting of the creditors held pursuant to law, your orator was elected trustee of the said firm of Steele, Miller & Company, all of which will appear more fully from the decree of adjudication in bankruptcy of the United States District Court for the Northern District of Mississippi rendered on the 31st day of May, 1910, in said cause, entitled Knoop, Fabarius & Co., et al., vs. Steele, Miller & Company, No. 123 of the docket of the United States District Court for the Northern District of Mississippi, in bankruptcy, and by reference to the proceedings before the referee in bankruptcy and the order approving the bond of your orator as trustee, which said proceedings are also made part hereof as though fully and at
3 length set forth herein and which will be produced at the trial of the cause.

Fourth. Your orator shows that on or prior to the 15th day of April, 1910, Steele, Miller & Company were indebted to the Bank of Mulhouse in the sum of 345,495.30 francs, which amounts to $66,313.87 in currency of the United States, and that said indebtedness arose out of the following transactions:

That said Steele, Miller & Company at a date to your orator unknown had adopted a fraudulent scheme of obtaining money, and in furtherance of which the said bankrupt firm did draw drafts for large sums of money and did attach to such drafts what purported to be through bills of lading of carriers for lots of cotton specifically described in such bills of lading, and thereupon the said Steele, Miller & Company received the money called for by such drafts either by their sale or their acceptance and payment by the drawees; that the said bills of lading resembled in form and appearance the bills of lading issued by carriers at places from which Steele, Miller & Company, from time to time, shipped cotton over the liens [lines] of such carriers, but the bills of lading attached to such drafts did not represent cotton actually received and shipped by the carriers, who, it was purported, issued them, but were spurious and forged bills of lading and in no sense represented cotton then in the possession of Steele, Miller & Company or delivered to the carriers for transportation. Your orator further avers that the sale, negotiation

and acceptance of drafts with actual bills of lading
4 for the cotton thereto attached, under the custom
which involves the delivery of such bills of lading upon the payment of the drafts, was and is the usual and customary method by which sale of cotton were and are accomplished by persons engaged in such trade, and the purchases of cotton were and are accomplished by the purchase or acceptance and payment of such drafts with bills of lading thereto attached; that, under the custom and practice of the cotton trade, such drafts were and are purchased or paid wholly on the security of the bills of lading thereto attached, and for the purpose of obtaining the cotton therein mentioned, and the purchase or acceptance and payment of the said drafts with the said bills of lading attached constituted the entire transaction between the parties, the bills of lading supposedly representing cotton which has passed into the carriers for delivery subject to the presentation of the bill of lading, and the payment and acceptance of the draft and the acquisition of the said bill of lading passing the muniment of title to the party who had paid or accepted the said draft.

Fifth. Your orator avers that on or about the following dates, to-wit, December 27, 1909, January 21, 1910, and January 24, 1910, and within ninety days thereafter, the Bank of Mulhouse had become the acceptor of drafts drawn by Steele, Miller & Company in the sum of 345,495.30 francs, which at the rate of exchange amounted to $66,313.87, to which drafts were attached papers purporting to be bills of lading of carriers for 900 bales of cotton, and your orator
annexes hereto as Exhibit "A" a statement showing
5 that dates of such drafts, the name of the drawee,
viz., the Bank of Mulhouse, the time when the drafts were payable, the marks of the cotton and the number of the bales thereof for which papers purporting to be bills of lading were attached to such drafts, and the amounts of such drafts in francs, in which form of currency the drafts were drawn, and your orator now avers as a matter of fact that the papers attached to the said drafts were not bills of lading for which any cotton had been received or shipped by the carriers which it was purported has issued such bills of lading as recited therein and such papers purporting to be the bills of lading were therefore wholly spurious and of no force and effect as

representing the cotton called for by them. The drafts aforesaid, and appearing in the said Exhibit "A," attached thereto, were accepted and paid for by or for the Bank of Mulhouse for the purpose of obtaining and thus buying the bills of lading thereto attached, and the cotton called for by such ladings, and by such acceptances and payment, your orator is advised and charges that the Bank of Mulhouse became and was a creditor of said Steele, Miller & Company in the sum of money hereinbefore stated.

Sixth. Your orator avers that the firm of Scheuch & Company, herein made a defendant, was at the time of the transactions herein recited, a commercial firm engaged in buying and selling cotton in Havre, France; that the said firm would and did purchase from Steele, Miller & Company certain cotton, and in accordance with the customs of the trade, did open banker's credit against which Steele, Miller & Company would draw its drafts to which were attached the
6 bills of lading, presumably bearing the marks of the cotton shipped, and to which were further attached what is known in the trade as "all necessary documents;" that in the transactions herein complained of, the cotton referred to in the bills of lading and in the drafts hereinbefore described was sold to Scheuch & Company, draft to be made upon the Bank of Mulhouse, papers attached to said drafts to the order of Steele, Miller & Company, notify Scheuch & Company.

Your orator further avers that for a long time previous to the 1st day of April, 1910, and at all times since that date, Steele, Miller & Company were wholly insolvent; that they had issued and negotiated drafts with spurious bills of lading attached in the manner hereinabove described, which had been purchased and paid for by persons in various parts of the world in an amount of money approximating three million dollars ($3,000,000) or more.

Seventh. Your orator shows that on or about the 6th day of April, 1910, the said Steele, Miller & Company had in its possession or under its control at Philadelphia, Mississippi, and Memphis, Tennessee, 900 bales of cotton marked respectively as follows:

R. D. A. R.
R. U. R. A.
Q. A. T. R.

100 bales of each mark, at Philadelphia, and

R. D. A. K.
R. D. T. N.
R. B. S. A.
7 Q. A. A. R.
R. J. K. S.
R. D. H. O.

100 bales of each mark at Memphis; and that said cotton on or about said date was shipped by said Steele, Miller & Company to the City of New Orleans, way-bills or bills of lading being issued in favor of J. D. Hardin & Company, of this city, and your orator annexes hereto as Exhibit "B" a statement showing the marks of said cotton, the number of bales of each mark, the date of delivery and issuance of the bills of lading or way-bills by the carrier, and the destination of said cotton. Your orator avers that the said cotton reached the City of New Orleans on or about the 15th day of April, 1910, and that thereupon the said cotton was claimed by J. D. Hardin or J. D. Hardin & Company, acting as agents of Steele, Miller & Company, and said cotton was delivered to the Compagnie Generale Transatlantique through its agent, the Texas Transport & Terminal Company, and port bills of lading issued therefor, which said bills of lading were returned by the said Hardin to Steele, Miller & Company at Corinth, Mississppi, or delivered in person to a member of said firm or an agent of said firm. Your orator annexes hereto a Exhibit "C" a statement showing the date that said cotton was delivered to the Texas Transport & Terminal Company as agents of the Compagnie Generale Transatlantique, the number and date of the bill of lading, the marks and numbers of bales of each mark of the said cotton so delivered.

Eighth. Your orator avers that about April 15, 1910, as herein stated above, the Bank of Mulhouse and
8 Scheuch & Company, or both of them, were ordinary unsecured creditors of Steele, Miller & Com-

pany in the sum of $66,313.87, represented by the drafts herein described and to which were attached the spurious and forged bills of lading; that on or about said date the said Steele, Miller & Company, being then insolvent, with intent to prefer said Bank of Mulhouse or Scheuch & Company, or both of them, over their other creditors, did deposit in the United States mail the said port bills of lading, the said bills of lading being addressed to Scheuch & Company, and the same having been indorsed by Steele, Miller & Company, the object and purpose of forwarding said port bills of lading being to substitute the same for the forged and worthless bill or bills of lading attached to the drafts held by the said Bank of Mulhouse or Scheuch & Company, or both of them, and that said port bills of lading in due course were received by Scheuch & Company and delivered to the Bank of Mulhouse, and your orator is advised that the Bank of Mulhouse thereupon surrendered his spurious and forged bills of lading to Scheuch & Company, who is now holding them, or by arrangement between said Scheuch & Company and the said Bank of Mulhouse, said spurious bills of lading are being held by the said Bank of Mulhouse for account of said parties. Your orator avers that the transmission of said port bills of lading to be substituted for the said fraudulent bills of lading was done with the intent to prefer the said Bank of Mulhouse, and that when the said bills of lading were mailed to the said Scheuch & Company for delivery to the Bank of Mulhouse,

9 and were received by the said Scheuch & Company and delivered to the Bank of Mulhouse, the said Scheuch & Company and the said Bank of Mulhouse, in accepting the said bills of lading and permitting the substitution of the said valid and port or custody bills of lading for the worthless bills of lading then held, knew or should have known and had reasonable cause to believe, that a preference was thereby given and intended, and knew of [or] should have known that Steele, Miller & Company was at said time insolvent, and that the effect of the mailing, the receipt and acceptance and substitution of said bills of lading was to enable the said Scheuch & Company on the said Bank of Mulhouse to obtain payment of its said draft; and your orator now charges that the effect of the act hereinabove described, if maintained and permitted by this Honorable Court, will be to enable the said Bank of Mulhouse or

Scheuch & Company, or both of them, to obtain a greater per cent of their said debt than any other creditor of said bankrupt, and that such acts should be set aside. Your orator charges the acts hereinabove complained of were performed within four months prior to the filing of the petition of involuntary bankruptcy herein, and your orator is advised that the act or acts complained of are voidable at his election, and he does now elect to avoid the same and files this his bill to avoid said transfer.

Your orator avers that at the time of the institution of the proceedings in bankruptcy and for a year previous to that time the said firm of Steele, Miller & Company and the individual members of said firm were insolvent within the meaning and intent of the Bankrupt Laws of the United States, and that said Steele, Miller & Company and the individual members of said firm are so insolvent, and that they have not surrendered assets of sufficient value to pay the creditors of said estate, and that the amount surrendered by said bankrupts, including and [any] amount that might be recovered by litigation, and the estates of the individual members when added to the firm assets, will not be sufficient to discharge the debts and obligations of said Steele, Miller & Company, but will only pay a small proportion of said obligations.

Ninth. Your orator avers that, at the time of the filing of the petition in involuntary bankruptcy herein referred to, 2,494 bales of said cotton were about to be shipped on the steamship "Texas" to Havre, France, and that the said 2,494 bales of cotton were actually loaded upon the said steamship; that 500 bales of said cotton were in the custody of the New Orleans Terminal Company at Port Chalmette; that, to-wit, on the 7th day of May, 1910, your orator as receiver in bankruptcy of said estate filed his petition for injunction against the removal of said cotton in the United States District Court for the Eastern District of Louisiana, and thereupon the Honorable District Court granted a restraining order, and subsequently on the 9th day of May, 1910, said Court issued an injunction pendente lite, enjoining, restraining and prohibiting the master, owner and agent of the steamship "Texas" from removing from the jurisdiction of this Court the cotton referred to in said proceedings, and on the

31st day of May, 1910, issued its injunction against the New Orleans Terminal Company to the same effect, all of which will appear more fully by the record of said proceedings entitled J. A. E. Pyle, Receiver, vs. Philip Landgren, Master S. S. Texas, et al., No. 14,219, of the docket of the United States District Court for the Eastern District of Louisiana, which said record is made part hereof as though fully and at length set forth herein. Your orator avers that upon the issuance of said injunction, the Texas Transport & Terminal Company, the agent of the Compagnie Generale Transatlantique, the owner of said steamship "Texas," acting by and with the consent of the master and owner of said vessel, caused the cotton, the removal of which had been enjoined, to be discharged from said ship and stored in the Kentucky Press in this city, to remain there until the further orders of said Court, all in accordance with the decree rendered in the above numbered and entitled cause; and your orator avers that the said cotton in [is] now in the said Kentucky Press awaiting the determination of this suit. Your orator avers that the cotton hereinabove described was and is part of and included in the cotton in the custody of the Texas Transport & Terminal Company, agent of the Compagnie Generale Transatlantique, owner of the steamship "Texas," and now stored in the Kentucky Press, awaiting the determination of this suit. Your orator attaches hereto a list as Exhibit "D" a table showing the marks of the cotton, the removal of which was enjoined in said proceedings.

11

Tenth. Your orator further avers that the Texas Transport & Terminal Company, W. H. Hendren, its agent, and the Compagnie Generale Transatlantique, decline to deliver said cotton or any part thereof to complainant or to any other person until it has been adjudged who is the owner of this cotton and to whom the possession thereof should be delivered by it.

12

Eleventh. Your orator avers that, although the Texas Transport & Terminal Company holds itself out as the duly accredited agent of the Compagnie Generale Transatlantique and does and performs acts for and in behalf of said Compagnie Generale Transatlantique, your orator is informed that said Compagnie Generale Transatlantique has never designated the said Texas Transport & Terminal Company as its agent for

the service of process in this State as required by the laws of this State, and that process should issue herein against the said Compagnie Generale Transatlantique through John T. Michel, Secretary of State of the State of Louisiana, in accordance with laws of Louisiana upon the subject matter.

Twelfth. Your orator further shows that the said Scheuch & Company and the individual members of the said firm, and the Bank of Mulhouse are not residents of the Eastern District of Louisiana but are aliens. That neither said Scheuch & Company nor the individual members of said firm nor the Bank of Mulhouse or any of its agents or officers are at present within the Eastern District of Louisiana or in the United States, and neither the said Scheuch & Company nor the individual members of said firm, nor the Bank of Mulhouse, are represented by anyone authorized to accept or receive service of process and that service by publication in the manner and form provided in such cases is necessary in the premises.

Thirteenth. Your orator submits himself to the jurisdiction of this Court, and offers to do equity, and to perform such terms and conditions as may be imposed by the
13 Court upon the granting of the relief hereinafter prayed for.

The premises considered, your orator prays that this Court will take jurisdiction of this his bill; that the Compagnie Generale Transatlantique and the Texas Transport & Terminal Company be made parties respondent hereto, and that by appropriate process and orders they be severally required to answer this bill, but not under oath, answer under oath being hereby expressly waived; that this Court's writ of subpoena issue to the said Compagnie Generale Transatlantique and the Texas Transport & Terminal Company, commanding them to answer this bill according to the rule of this Court, but not under oath, answer under oath being hereby expressly waived; that service upon the Compagnie Generale Transatlantique be made upon John T. Michel, Secretary of State of the State of Louisiana, at Baton Rouge, Louisiana; that by appropriate orders and process Scheuch & Company and the Bank of Mulhouse be required to appear in this cause and plead or demur to and answer this bill, but not under oath, answer under oath being expressly waived; that pending the final hearing of this bill said Compagnie Generale Transatlantique, the Texas Trans-

port & Terminal Company, and W. H. Hendren, agent, their officers and employes, be enjoined and restrained from removing or disposing of said 900 bales of cotton; that upon the final hearing of this bill this Court will set aside the transfer of the said 900 bales of cotton by the said bankrupt to the said Bank of Mulhouse or Scheuch & Company, or both of them, and hold the same void and of no effect, and decree that the title to the said cotton and the right of possession thereof
14 is in your orator and will permit your orator to take possession of said cotton and administer the same, or the proceeds thereof, for the benefit of the creditors in bankruptcy of Steele, Miller & Company in said bankruptcy proceedings in which said estate in being administered in the United States District Court for the Northern District of Mississippi and in the ancillary proceedings in the United States District Court for the Eastern District of Louisiana.

And if your orator is mistaking in the relief prayed for, then he prays for such other, further and general relief as in equity and good conscience he may be entitled to.

(Signed) W. A. PERCY,
(Signed) J. A. LAMB,
(Signed) SAUNDERS, DUFOUR & DUFOUR,
Solicitors.

15 State of Louisiana,
Parish of Orleans,
City of New Orleans.

William C. Dufour, being duly sworn, deposes and says: That he is a member of the firm of Saunders, Dufour & Dufour, attorneys at law in the City of New Orleans; that he is one of the attorneys for J. A. E. Pyle, trustee; that the said J. A. E. Pyle, trustee, is a resident of the State of Mississippi, and is not now in the State of Louisiana, and is not otherwise represented; and that the allegations contained in the foregoing petition are true and correct to the best of his knowledge and belief, so help him God.

(Signed) WM. C. DUFOUR.

Sworn to and subscribed before me this 12th day of August, 1910.

(Signed) JOHN JANVIER,
[Seal] Notary Public.

EXHIBIT "A."

Statement Banque De Mulhouse, Havre, France.

Date.	Draft No.	Marks.	No. Bales.	Amount.	Pretended origin of shipment.
12/27/1909	2,006	R. D. A. R.	100	40,217.90	E. 96—12/27/1909 Jackson, Miss.
12/27/1909	2,007	R. U. R. A	100	40,697.65	Columbus, Miss.
12/27/1909	2,008	Q. A. T. R	100	41,333.90	Columbus, Miss.
1/21/1910	2,100	R. D. A. K.	100	36,680.00	Tupelo, Miss.
1/21/1910	2,101	R. D. T. N.	100	36,562.15	Ackerman, Miss.
1/24/1910	2,122	R. B. S. A.	100	37,515.40	Columbus, Miss.
1/24/1910	2,123	Q. A. A. R	100	37,689.50	Jackson, Miss.
1/24/1910	2,124	R. J. K. S.	100	37,225.15	Jackson, Miss.
1/24/1910	2,125	R. D. H. O.	100	37,573.65	Holly Springs, Miss.
			900	345,495.30	

Which, at 5.21, amounts to..... $66,313.87

THIS PAGE IS BOUND VERTICAL IN BOOK

EXHIBIT "B."

Statement of Cotton Shipped by Steele, Miller & Co., to J. D. Hardin, Jr., & Co., of New Orleans, Showing the Origin and Marks of Cotton as Follows:

Date.	W. B.	R. R.	Shipped to order.	Marks.	No. bales.
4/14/1910	Philadelphia	M. J. & K. C.	S/o—N. O.	R. D. A. R.	100
4/14/1910	Philadelphia	"	S/o—N. O.	R. U. R. A.	100
4/14/1910	Philadelphia	"	S/o—N. O.	Q. A. T. R.	100
4/ 6/1910	274 Memphis	Sou.	S/o—N. O.	R. D. A. K.	100
4/ 6/1910	276 Memphis	Sou.	S/o—N. O.	R. D. T. N.	100
4/ 6/1910	276 Memphis	Sou.	S/o—N. O.	R. B. S. A.	100
4/ 6/1910	272 Memphis	Sou.	S/o—N. O.	Q. A. A. R.	100
4/ 6/1910	277 Memphis	Sou.	S/o—N. O.	R. J. K. S.	100
4/ 6/1910	279 Memphis	Sou.	S/o—N. O.	R. D. H. O	100
					900 bales

THIS PAGE IS BOUND VERTICAL IN BOOK

18 EXHIBIT "C."

Shipment of Cotton Delivered by J. D. Hardin, Jr., & Co. to the Texas Transport and Terminal Co., Agents for the Str. Texas, Showing Marks and Date of Custody B/L.

Date of Delivery.		Marks.	No. of Bales.
April 25, 1910	Custody	R. D. A. R.	100
April 25, 1910	Custody	R. U. R. A.	100
April 25, 1910	Custody	Q. A. T. R.	100
April 20, 1910	Custody	R. D. A. K.	100
April 25, 1910	Custody	R. D. T. N.	100
April 25, 1910	Custody	R. B. S. A.	100
April 20, 1910	Custody	Q. A. A. R.	100
April 22, 1910	Custody	R. J. K. S.	100
April 15, 1910	Custody	R. D. H. O.	100
			900 bales

19 United States District Court, Eastern District of Louisiana.

J. A. E. Pyle, Trustee,
vs. No. 14,240.
Texas Transport & Terminal Company, et als.

Considering the allegations of this bill and the allegations in support thereof, it is now ordered, that this bill be filed and process issued as prayed for.

It appearing to the Court that there is danger of irreparable injury to complainant unless the acts sought to be enjoined herein are restrained until the hearing of motion for injunction in his case, it is ordered:

1. That the defendants, the Texas Transport & Terminal Company and the Compagnie Generale Transatlantique, and each of them, and the individual members thereof, and each of their servants, agents and employees, be and they are hereby retained and enjoined until the further order of the Court herein from removing from the jurisdiction of this Court the 900 bales of cotton described in the bill filed in this cause,

leave being given to the said Texas Transport & Terminal Company and the Compagnie Generale Transatlantique, or any other party in interest, to apply after five days notice to complainant's counsel for permission to bond said cotton.

2. That the defendants, the Texas Transport & Terminal Company and Compagnie Generale Transatlantique, and each of them, show cause before this Court in the United States court room at the City of New Orleans, at eleven o'clock a. m., on the first Monday in November, to-wit, Monday the seventh day of November, 1910, why an injunction pendente lite as prayed for in the said bill should not be issued.

20 3. That this restraining order shall be in force and effect from the date hereof until the hearing of complainant's motion for an interlocutory injunction herein, provided that complainant furnish bond within ten days from the date of this order in the sum of $900.00, payable to defendant with surety approved by the clerk of this Court and conditioned substantially as hereinafter mentioned. The condition of said bond shall be substantially as follows:

Whereas, a restraining order has been made in the above numbered and entitled cause by the terms of which the defendants and each of them, and each of their agents and employees are restrained until an application for an interlocutory injunction herein is determined from doing or causing to be done certain acts.

Now, therefore, if the above mentioned J. A. E. Pyle, receiver, shall pay or cause to be paid all damages caused by the issuance of said restraining order, and the costs of this cause in connection therewith in the event that the said restraining order is dissolved or vacated as having been wrongfully issued, or because the said acts are improperly restrained, then this bond to be void, otherwise to remain in full force and effect.

It further appearing to the Court that said defendants, Scheuch & Company and Fred Scheuch and Albert Schilling, the individual members of said firm, and the Bank of Mulhouse, are not inhabitants of the Eastern District of Louisiana, upon whom service of process can be made, it is ordered that the defendants, Scheuch & Company and Fred Scheuch and

Albert Schilling, individual members of said firm, and Bank of Mulhouse, shall appear, plead, answer or demur by the first Monday of November, 1910; that a copy of this
21 order be served upon said defendant wherever found, and if such personal service is not practicable, that said defendants be notified of this order so directing them to appear, plead, answer or demur by the first Monday of November, 1910, by publication thereof in a daily newspaper in the City of New Orleans, La., not less than once a week for six consecutive weeks.

(Signed) RUFUS E. FOSTER, Judge.

August 16th, 1910.

Notation as to the Publication of a Certified Copy of the Foregoing Order.

Published in the "New Orleans Item"
on Monday, Septr. 12th, and
on Monday, Septr. 19th, and
on Monday, Septr. 26th, and
on Monday, Octr. 3rd, and
on Monday, Octr. 10th, and
on Monday, Octr. 17th, 1910.

(Signed) F. H. MORTIMER, Clerk.
Per GEO. W. ROBERTSON,
Deputy Clerk.

22 14,240.

MARSHAL'S RETURN ON ORDER ON BILL OF COMPLAINT.

Filed August 30, 1910.

Received by U. S. Marshal, New Orleans, La., Aug. 18/10, and on August 25/10 I served the original writ of which this a certified copy on the Texas Transport and Terminal Co., by handing the same to W. H. Hendren, local manager, in person in their office in New Orleans, La.

(Signed) VICTOR LOISEL, U. S. Marshal.
(Signed) By B. F. QUEEN, Dy.

Received by U. S. Marshal, New Orleans, La., Oct. 18/10, and on the 26th day of the same month and year I served copy

hereof on E. J. McGivney, Asst. Sect'y of State of La., by handing same to him in person in Baton Rouge, La.

(Signed) VICTOR LOISEL, U. S. Marshal.

(Signed) By T. I. GALBRITH, Dy.

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23 SUBPOENA IN CHANCERY.

Issued August 18, 1910.

United States of America.

The President of the United States,

To the Marshal of the Eastern District of Louisiana, Greeting:

You are hereby commanded to summon The Texas Transport & Terminal Company to appear before a District Court of the United States of America, to be holden at the City of New Orleans, Louisiana, on the first Monday of November, 1910, then and there to answer a bill in chancery, filed against it and others, wherein J. A. E. Pyle, trustee in bankruptcy of Steele, Miller & Company, is complainant and said the Compagnie Generale Transatlantique; Texas Transport & Terminal Company; F. Scheuch & Company, and the Bank of Mulhouse are defendants.

Herein fail not, and have you then and there this writ, with your indorsement thereon, how you have executed the same.

Witness, the Honorable Rufus E. Foster, Judge of the District Court of the United States, at New Orleans, La., this 18th day of August in the year of our Lord one thousand nine hundred and ten, and 135th year of American Independence.

[Seal of Court]

(Signed) FRANK H. MORTIMER, Clerk.

The defendant is hereby notified that it is required to enter its appearance in the clerk's office of the United States District Court on or before the first Monday of November, 1910, otherwise the bill may be taken pro confesso.

(Signed) FRANK H. MORTIMER, Clerk.

Clerk's Office:

A true copy.

(Signed) FRANK H. MORTIMER,

[Seal] Clerk.

24 [Indorsed:] No. 14240. United States District Court, Eastern District of Louisiana, New Orleans Division. J. A. E. Pyle, Trustee, vs. Texas Transport & Terminal Company, et als. Subpoena in Chancery. Marshal's Return.

MARSHAL'S RETURN ON SUBPOENA IN CHANCERY.

Filed August 30th, 1910.

Received by U. S. Marshal, New Orleans, La., Aug. 18/10, and on Aug. 25/10 I served the original writ of which this is a certified copy on the Texas Transport and Terminal Co., by handing the same to W. H. Hendren, local manager, in person, in their office in New Orleans, La.

VICTOR LOISEL, U. S. Marshal.

(Signed) By B. F. QUEEN, Dy.

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25 SUBPOENA IN CHANCERY.

Issued August 18th, 1910.

United States of America.
The President of the United States,

To the Marshal of the Eastern District of Louisiana, Greeting:

You are hereby commanded to summon Compagnie Generale Transatlantique through John T. Michel, Secretary of State of the State of Louisiana, at Baton Rouge, Louisiana, to appear before a District Court of the United States of America, to be holden at the City of New Orleans, Louisiana, on the first Monday of November, 1910, then and there to answer a bill in chancery, filed against it and others, wherein J. A. E. Pyle, trustee in bankruptcy of Steele, Miller & Company, is complainant and said the Compagnie Generale Transatlantique; Texas Transport & Terminal Company; F. Scheuch & Company, and the Bank of Mulhouse are defendants.

Herein fail not, and have you then and there this writ, with your indorsement thereon, how you have executed the same.

Witness, the Honorable Rufus E. Foster, Judge of the District Court of the United States, at New Orleans, La., this 18th day of August, in the year of our Lord one thousand nine hundred and ten, and 135th year of American Independence.

[Seal of Court]

(Signed) FRANK H. MORTIMER, Clerk.

The defendant is hereby notified that it is required to enter its appearance in the clerk's office of the United States District Court on or before the first Monday of November, 1910, otherwise the bill may be taken pro confesso.

(Signed) FRANK H. MORTIMER, Clerk.

Clerk's Office:
A true copy.

(Signed) FRANK H. MORTIMER,
[Seal] Clerk.

26 [Indorsed:] No. 14240. United States District Court, Eastern District of Louisiana, New Orleans Division. J. A. E. Pyle, Trustee, vs. Texas Transport & Terminal Company, et als. Subpoena in Chancery. Marshal's Return.

MARSHAL'S RETURN ON SUBPOENA IN CHANCERY.

Filed August 30th, 1910.

Received by U. S. Marshal, New Orleans, La., Aug. 18/10, and on the 26th day of the same month and year I served the original of which this writ is a certified copy on John T. Michel, Secretary of the State of Louisiana, by handing the same to the Asst. Secretary of the State of Louisiana, Eugene J. McGivney, in person, in the City of Baton Rouge, Louisiana.

VICTOR LOISEL,
U. S. Marshal.

(Signed) By T. I. GALBRETH,
Deputy U. S. Marshal.

27 BOND OF J. A. E. PYLE, TRUSTEE.

Filed August 25th, 1910.

United States District Court, Eastern District of Louisiana.

J. A. E. Pyle, Trustee,

vs. No. 14240.

Texas Transport and Terminal Company, et als.

Know all men by these presents, that we, J. A. E. Pyle, trustee of Steele, Miller & Company, bankrupt, appointed by and acting under authority of the District Court of the United States for the Northern District of Mississippi, as principal, and William C. Dufour, as surety, are held and firmly bound unto the Compagnie Generale Transatlantique, the Texas Transport & Terminal Company, F. Scheuch & Company, and Bank of Mulhouse, defendants herein, for the use and benefits of defendants in the below mentioned suit, in the full and true sum of nine hundred dollars ($900.00) lawful money of the United States of America, for the payment whereof we bind ourselves, our heirs, executors, successors and assigns firmly by these presents.

Thus done and signed in the City of New Orleans, State of Louisiana, on this 24th day of August, A. D. 1910.

Now therefore, the condition of the above obligation is such that,

Whereas the said J. A. E. Pyle, trustee in bankruptcy of Steele, Miller & Company, did, in the proceedings #14240 of the docket of the United States District Court for the Eastern District of Louisiana, entitled "J. A. E. Pyle, Trustee, versus Texas Transport & Terminal Co., et als.," apply for and obtain a restraining order against the Compagnie Generale Transatlantique and the Texas Transport & Terminal Company restraining them, and each of them, and the individual members thereof, and each of their servants, agents, and employees, until the further order of the Court herein, from removing from the jurisdiction of the Court the 900 bales of cotton described in the pleadings filed in this cause upon condition that said trustee, J. A. E. Pyle, should furnish bond,

Now, therefore, if the above mentioned J. A. E.

28 Pyle, trustee, shall pay or cause to be paid all damages caused by the issuance of said restraining order,

and the costs of this cause in connection therewith in the event that said restraining order is dissolved or vacated as having been wrongfully issued, or because the said acts are improperly restrained, then this bond to be void, otherwise to remain in full force and effect.

(Signed) J. A. E. PYLE, Trustee,
By SAUNDERS, DUFOUR & DUFOUR.
WM. C. DUFOUR.

William C. Dufour, surety on the within bond, being duly sworn, says that he resides in the City of New Orleans, Louisiana, and is worth the sum of nine hundred dollars ($900.00) over and above all his just debts and liabilities.

(Signed) WM. C. DUFOUR.

Sworn to and subscribed before me this 24th day of August, 1910.

(Signed) ROSS E. BREAZEALE.

This bond is approved for the sum of nine hundred dollars.

(Signed) GEO. W. ROBERTSON,
Deputy Clerk.

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29 RESTRAINING ORDER.

Issued August 25th, 1910.

United States of America.

District Court of the United States, Eastern District of Louisiana, New Orleans Division.

J. A. E. Pyle, Trustee,
vs. No. 14240.
Texas Transport & Terminal Company, et als.

The President of the United States,

To the Texas Transport & Terminal Company and the Compagnie Generale Transatlantique, Greeting:

Whereas, it has been represented unto us in our said District

Court on the part of J. A. E. Pyle, trustee in bankruptcy of Steele, Miller & Company, in a bill in equity lately exhibited against you and each of you touching certain matters and things therein set forth; and, whereas, the Honorable Rufus E. Foster, the Judge of our said Court, upon due consideration thereof, has made and allowed an order in said cause, whereby you and each of you are required to show cause on the seventh day of November, 1910, at 11 A. M., why an injunction should not issue as prayed for in said bill of complaint; and, whereas, the said Judge has granted and allowed an order restraining you and each of you immediately and forthwith and during the pendency of said motion for an injunction to the full extent and effect as prayed for in said bill of complaint.

Now, therefore, in consideration of the premises and of the allegations in said bill of complaint contained, you, the said Texas Transport & Terminal Company and the said Compagnie Generale Transatlantique, your agents, attorneys and servants and each of you are hereby commanded and strictly enjoined under the penalty of the law, that you and each of you absolutely refrain and desist from removing from the jurisdiction of this Court the 900 bales of cotton described in the bill filed in this cause. And that you, the said Texas Transport & Terminal Company and the said Compagnie Generale Transatlantique, your agents, attorneys and servants and each of you, remain so inhibited and restrained until the further order of our said Court in the premises.

Witness, the Honorable Rufus E. Foster, Judge of said Court, at the City of New Orleans, La., this 25th day of August, in the year of our Lord 1910.

(Signed) FRANK H. MORTIMER, Clerk.
By GEO. W. ROBERTSON,
Deputy Clerk.

A true copy.
(Signed) GEO. W. ROBERTSON,
[Seal] Deputy Clerk.

30 [Indorsed:] No. 14240. U. S. District Court, Eastern District of Louisiana, New Orleans Division. J. A. E. Pyle, Trustee, vs. Texas Transport & Terminal Co., et als. Restraining Order.

MARSHAL'S RETURN ON RESTRAINING ORDERS.

Filed September 12th, 1910.

Received by U. S. Marshal, New Orleans, La., Aug. 25/10, and on same day I served the original writ of which this is a certified copy on the Texas Transport and Terminal Co. by handing the same to W. H. Hendren, local manager, in person, in their office in New Orleans, La.

VICTOR LOISEL,
U. S. Marshal.
(Signed) By B. F. QUEEN, Dy.

Received by U. S. Marshal, New Orleans, La., Aug. 25/10, and on Sept. 10/10 I served the original writ of which this is a certified copy on the Compagne Generale Transatlantique, by handing the same to Eugene McGivney, Asst. Sec. of State, in Baton Rouge, La.

VICTOR LOISEL,
U. S. Marshal.
(Signed) By T. F. LAICHE, Dy.

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31 APPEARANCE OF THE TEXAS TRANSPORT & TERMINAL COMPANY AND COMPAGNIE GENERALE TRANSATLANTIQUE.

Extract From the Chancery Order Book.

New Orleans, Tuesday, Septr. 6, 1910.

J. A. E. Pyle, Trustee,
vs. 14240.
Texas Transport & Terminal Co., et als.

Now comes The Texas Transport & Terminal Company and Compagnie Generale Transatlantique, defendants in the above styled and numbered cause, and, through their solicitor, George H. Terriberry, Esq., enter their appearance herein.

32 SPECIAL APPEARANCE OF THE BANK OF MULHOUSE.

Extract From the Chancery Book.

New Orleans, Friday, October 7, 1910.

J. A. E. Pyle, Trustee,
vs. 14240.
Texas Transport & Terminal Co., et als.

Now into Court comes the Bank of Mulhouse, made one of the defendants herein, and through its solicitors, Messrs. Denegre & Blair, enters its special and qualified appearance herein, reserving the right to object to the jurisdiction of this Court to grant the relief herein sought by complainant, and appearing under protest specially and solely for said purpose, and for the protection of its rights to and in respect to the cotton mentioned in said complaint.

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33 HEARING ON APPLICATION FOR INJUNCTION PENDENTE LITE, AND CONTINUANCE.

Extract From the Minutes, May Term, 1910.

New Orleans, Monday, November 7th, 1910.

Court met pursuant to adjournment.

Present: Hon. Rufus E. Foster, Judge.

J. A. E. Pyle, Trustee,
vs. No. 14,240.
Texas Transport and Terminal Company, et als.

The application for an injunction pendente lite herein, fixed for hearing this day, was called.

Present: Messrs. Saunders, Dufour & Dufour, Solicitors for Complainant.

Present: George H. Terriberry, Esq., Solicitor for Texas Transport & Terminal Co., et als., Defendants.

Present: Messrs. Denegre & Blair, Solicitors for Bank of Mulhouse, Defendant.

Whereupon, on motion of solicitors for complainant, it is ordered that the application for an injunction pendente lite be continued until Monday, November 21st, 1910, at 11 A. M., and that the restraining order heretofore issued herein remain in force until the further order of the Court.

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34 HEARING ON APPLICATION FOR INJUNCTION PENDENTE LITE, AND CONTINUANCE.

Extract From the Minutes, November Term, 1910.

New Orleans, Monday, November 21st, 1910.

Court met.

Present: Hon. Rufus E. Foster, Judge.

J. A. E. Pyle, Trustee,

vs. No. 14,240.

Texas Transport and Terminal Company, et als.

The application for an injunction pendente lite herein, set for hearing this day, was called.

Present: Messrs. Saunders, Dufour & Dufour, Solicitors for Complainant.

Present: George H. Terriberry, Esq., Solicitor for Texas Transport & Terminal Co., et als., Defendants.

Present: Messrs. Denegre & Blair, Solicitors for Bank of Mulhouse, Defendant.

Whereupon, on motion of the solicitors for the parties in interest, it is ordered that the hearing of said application be continued until Friday, December 2nd, 1910, at eleven o'clock A. M.

It is further ordered, on motion of solicitors for complainant, that the restraining order heretofore issued herein remain in force until the further order of the Court.

35 HEARING ON APPLICATION FOR INJUNCTION PENDENTE LITE, IN PART, AND CONTINUANCE.

Extract From the Minutes, November Term, 1910.

New Orleans, Friday, December 2nd, 1910.

Court met pursuant to adjournment.

Present: Hon. Rufus E. Foster, Judge.

J. A. E. Pyle, Trustee,
vs. No. 14,240.
Texas Transport and Terminal Company, et als.

The application for an injunction pendente lite herein, set for hearing this day, was called.

Present: Messrs. Saunders, Dufour & Dufour, Solicitors for Complainant.

Present: George H. Terriberry, Esq., Solicitor for Texas Transport & Terminal Co., et als., Defendants.

Present: Messrs. Denegre & Blair, Solicitors for Bank of Mulhouse, Defendant.

Whereupon the solicitors for the respective parties filed notes of evidence in their behalf.

After hearing argument in part, it was ordered by the Court that the cause be continued until Saturday, December 3rd, 1910, at ten o'clock A. M., for further argument.

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36 NOTE OF EVIDENCE ON BEHALF OF COMPLAINANT.

Filed December 2nd, 1910.

United States District Court, Eastern District of Louisiana.

J. A. E. Pyle, Trustee,
vs. No. 14,240.
Texas Transport & Terminal Company, et als.

Note of Evidence on Behalf of Complainant.

Solicitors for complainant offer, produce and file in evidence:

(1) Affidavit of Elmer E. Clark, business manager of the New Orleans Item, a daily newspaper published in the City of New Orleans, which affidavit is sworn to before Ross E. Brezeale, notary public, on November 16, 1910, to which is attached copy of advertisement of order of Court.

(2) Affidavit of C. H. G. Linde, taken before John Janvier, notary public, on December 2nd, 1910, together with the exhibit attached thereto, said exhibit containing a memorandum of 2498 bales of cotton, together with their marks, etc.

(3) Affidavit of Edward S. Elliott, taken before John Janvier, notary public, on December 2nd, 1910, together with exhibit thereto attached and statement showing dealings of Steele, Miller & Company with the Bank de Mulhouse, Comptoir Escompe de Mulhouse, Paul Chardin, and Societe Generale.

(4) Affidavit of William C. Dufour taken before John Janvier, notary public, of date November 28th, 1910, together with exhibits thereto, said exhibits being two copies of the Havre Bulletin of date April 27th and April 28th, inclusive.

(5) Affidavit of William C. Dufour before John Janvier, notary public, on November 25th, together with exhibit attached thereto, said exhibit being a copy of the Liverpool Daily Post of date November 27th, 1910.

37 (6) Affidavit of Andre Lafargue, taken before John Janvier, notary public, on November 25, 1910, together with exhibits attached thereto, said exhibit being testimony of W. H. Hendren taken before the Hon. William A. Bell, referee in bankruptcy.

(7) Affidavit of Andre Lafargue, taken before John Janvier, notary public, on November 25, 1910, together with exhibit thereto, said exhibit being the testimony of J. D. Hardin taken before the Hon. William A. Bell, referee in bankruptcy.

(8) Affidavit of William C. Dufour, taken before John Janvier, notary public, on December 2, 1910, together with an exhibit thereto attached, said exhibit being a certified copy of

the petition filed in the matter of Cohn & Company vs. Steele, Miller & Company in the United States Circuit Court for the State of Mississippi, together with a certified copy of the judgment appointing the receiver for the firm of Steele, Miller & Company.

The entire proceeding, including petition for adjudication in involuntary bankruptcy, order appointing J. A. E. Pyle temporary receiver, and judgment adjudicating Steele, Miller & Company and the individual members thereof involuntary bankrupts, together with the order appointing J. A. E. Pyle trustee of Steele, Miller & Company, and the individual members thereof, and a certified copy of the bond of said J. A. E. Pyle, same being embraced in the matter entitled Knoop, Fabarius & Company, et als., vs. Steele, Miller & Company, No. 123 of the docket of the United States District Court for the Northern District of Mississippi, same being embraced in the ancillary proceedings No. 1430 of the docket of this Court entitled Knoop, Fabarius et al., vs. Steele, Miller & Company.

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38 EVIDENCE ON BEHALF OF COMPLAINANT, ON APPLICATION FOR INJUNCTION—AFFIDAVIT OF ELMER E. CLARKE.

Filed December 2nd, 1910.

United States District Court, Eastern District of Louisiana.

J. A. E. Pyle, Trustee,
vs. No. 14240
Texas Transport & Terminal Company, et al.

State of Louisiana,
Parish of Orleans.

Elmer E. Clarke being duly sworn, depose and says:

That he is the business manager of the New Orleans Item, a daily newspaper published in the City of New Orleans, State of Louisiana, Eastern District of Louisiana; that the annexed advertisement appeared in the said New Orleans Item once a

week for six consecutive weeks; that said publication appeared on the following days, to-wit:

September 12-19-26—October 3-10-17, 1910.

(Signed) ELMER E. CLARKE.

Sworn to and subscribed before me this 16th day of November, 1910.

ROBERT E. BRAEZEALE,
N. P. [Seal]

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39 OFFICIAL NOTICE.

J. A. E. Pyle, Trustee, vs. Texas Transport & Terminal Company, et Als.—(No. 14,240)—United States District Court, Eastern District of Louisiana.

Considering the allegations of this bill and the allegations in support thereof,

It is now ordered: That this bill be filed and process issue as prayed for,

It appearing to the Court that there is danger of irreparable injury to complainant unless the acts sought to be enjoined herein are restrained until the hearing of a motion for injunction in this case, it is ordered:

1. That the defendants, the Texas Transport & Terminal Company and the Compagnie Generale Transatlantique and each of them, and the individual members thereof, and each of their servants, agents and employees, be and they are hereby restrained and enjoined until the further order of the Court herein from removing from the jurisdiction of this Court the 900 bales of cotton described in the bill filed in this cause, leave being given to the said Texas Transport & Terminal Company and the Compagnie Generale Transatlantique, or any other party in interest, to apply after five days' notice to complainants counsel for permission to bond said cotton.

2. That the defendants, Texas Transport & Terminal Company and Compagnie Generale Transatlantique, and each of them, show cause before this Court in the United States court

room at the City of New Orleans, at eleven o'clock A. M., on the first Monday in November, to-wit: Monday, the seventh day of November, 1910, why an injunction pendente lite as prayed for in the said bill should not be issued.

3. That this restraining order shall be in force and effect from the date hereof until the hearing of complainant's motion for an interlocutory injunction herein, provided that complainant furnish bond within ten days from the date of this order in the sum of $900.00, payable to the defendant with surety approved by the Clerk of this Court and conditioned substantially as hereinafter mentioned. The condition of said bond shall be substantially as follows:

Whereas, a restraining order has been made in the above numbered and entitled cause by the terms of which the defendants and each of them, and each of their agents and employees are restrained until an application for an interlocutory injunction herein is determined from doing or causing to be done certain acts.

Now, therefore, if the above mentioned J. A. E. Pyle, receiver, shall pay or cause to be paid all damages caused by the issuance of said restraining order, and the costs of this cause in connection therewith in the event that said restraining order is dissolved or vacated as having been wrongfully issued, or because the said acts are improperly restrained, then this bond to be void, otherwise to remain in full force and effect.

It further appearing to the Court that said defendants, Scheuch & Company and Fred Scheuch and Albert Schilling, the individual members of said firm, and the Bank of Mulhouse, are not inhabitants of the Eastern District of Louisiana, upon whom service of process can be made.

It is ordered that the defendants, Scheuch & Company and Fred Scheuch and Albert Schilling, individual members of said firm, and Bank of Mulhouse, shall appear, plead, answer or demur by the first Monday of November, 1910; that a copy of this order be served upon said defendants wherever found, and if such personal service is not practicable, that said defendants be notified of this order so directing them to appear, plead, answer or demur by the first Monday of November, 1910, by publication thereof in a daily newspaper in the City

of New Orleans, La., not less than once a week for six consecutive weeks.

August 16th, 1910.

(Signed) RUFUS E. FOSTER, Judge.

Clerk's Office:

I, Frank H. Mortimer, Clerk of the District Court of the United States for the Eastern District of Louisiana, do hereby certify the above and foregoing to be a true and correct copy of the original on file and of record in my office in the above entitled and numbered cause.

Witness my hand and the seal of said Court at New Orleans, La., this 7th day of September, A. D. 1910.

FRANK H. MORTIMER, Clerk.
By GEORGE W. ROBERTSON,
[Seal] Deputy Clerk.

Sept. 12, 19, 26, Oct. 3, 10, 17.

Affidavit of C. H. G. Linde, Edward S. Elliott, and Exhibits attached thereto, omitted per instructions.

* * * * * * * *

46 Affidavit of William C. Dufour, taken before John Janvier, notary public, of date November 28th, 1910, referring to two copies of the Havre Bulletin of date April 27th and 28th, inclusive.

Filed December 2nd, 1910.

Note:—

Missing from the record.

47 EXHIBIT "15," OFFERED ON BEHALF OF THE COMPLAINANT.

United States District Court, Eastern District of Louisiana, New Orleans Division.

J. A. E. Pyle, Trustee,
vs. No. 14,240
Texas Transport & Terminal Company, et als.

Extract from the Bulletin de Correspondence of Havre, Wednesday, April 27, 1910.

We spoke yesterday of a new failure in the United States. Regarding which the following telegram from Liverpool was received:

Several cotton houses will be affected by the failure of the firm of Steele, Miller & Co., of Memphis, who dealt largely with Europe.

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48 EXTRACT FROM THE BULLETIN DE CORRESPONDENCE OF HAVRE, THURSDAY, APRIL 28TH, 1910.

This week the markets were influenced by two events, firstly, the failure of two United States Export firms; if the details given out could only create distrust and hence produce a slacking of business, on the other hand, they ought to contribute to steading [steadying] the prices since they indicated the possibility of non-delivery of the cotton bought at least in the given delays. It is to be hoped that there is some exaggeration in the rumors circulated and what has just happened will chiefly result in the seeking of means for greater security to those who will have to import cotton.

49 AFFIDAVIT OF WILLIAM C. DUFOUR IN RE LIVERPOOL DAILY POST AND MERCURY.

Filed December 2nd, 1910.

United States District Court, Eastern District of Louisiana.

J. A. E. Pyle, Trustee,
vs. No. 14,240
Texas Transport and Terminal Company, et als.

State of Louisiana,
Parish of Orleans.

William C. Dufour, being duly sworn, deposes and says:

That he is of counsel for J. A. E. Pyle, trustee in the bankruptcy of Steele, Miller & Company; that in performance of his duties as counsel for said trustee and for the purpose of establishing notice of the facts of the suspension and insolvency of Steele, Miller & Company, affiant visited various cotton ports of Europe and particularly the port of Liverpool, England; that while there affiant learned that there was published in the City of Liverpool, England, a daily newspaper of general circulation called the Liverpool Daily Post and Mercury from which it will appear that announcement of the failure of Steele, Miller & Company was made in the City of Liverpool previous to April 27, 1910.

(Signed) WM. C. DUFOUR.

Sworn to and subscribed before me this 25th day of November, 1910.

[Seal] (Signed) JOHN JANVIER,
Notary Public.

50 EXTRACT FROM THE LIVERPOOL DAILY POST AND MERCURY, WEDNESDAY, APRIL 27, 1910.

Offered on Behalf of J. A. E. Pyle, Trustee, and Filed Dec. 2, 1910.

United States District Court, Eastern District of Louisiana,

New Orleans Division.

Nos. 14,240, 14,241, 14,242, 14,243 and 14,277

J. A. E. Pyle, Trustee, etc.,
versus
Texas Transport & Terminal Company, et als.

State of Trade.

Cotton.

Liverpool, Tuesday Evening.

Business this morning opened in quite an active vein, and during the early trading the turnover was large, shorts covering new crops freely on frost reports in certain sections of the cotton belt and anticipation of cold weather in the near future. Sellers were scarce, and a pretty general advance took place of 10 to 12 1/2 points, but after the first rush to buy was over the market seemed to lack "vim," business fell off, and prices slowly but surely reacted. There was nothing particularly new with regard to the Knight, Yancey and Co. failure except the discovery of further floating assets in the shape of cotton on the water, and a cable from the other side saying that more assets were also turning up, which would be secured for the benefit of the creditors. From this point of view the situation looked a little brighter; but unfortunately just about this time rumors became current that another Southern shipping firm about whom inquiries have been current during the past day or two were likely to default in their engagements. This, naturally, had a depressing effect upon the tone of the market, and when late in the day these reports

were confirmed by the news that the firm in question, Messrs. Steele, Miller and Co., of Memphis, had suspended payment prices dropped back sharply, old crop practically losing the whole of the early improvement and new the greater part of the advance. We understand the embarrassments of the above firm are not likely to cause trouble in Liverpool, but on the Continent their commitments are large, and will lead to a lot of uneasiness. New crop news this afternoon is more satisfactory, warmer weather being reported from many sections of Texas, and the reports of damage received this morning were probably exaggerations.

Affidavits of Andre Lafargue, William C. Dufour, and Exhibits annexed thereto, omitted per instructions.

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95 NOTE OF EVIDENCE OF TEXAS TRANSPORT & TERMINAL COMPANY AND COMPAGNIE GENERALE TRANSATLANTIQUE.

Filed December 2nd, 1910.

In the District Court of the United States for the Eastern District of Louisiana.

J. A. E. Pyle, Trustee,
vs. No. 14,240
Texas Transport & Terminal Company, et als., Including Bank of Mulhouse.

Note of evidence on behalf of Texas Transport & Terminal Company and Compagnie Generale Transatlantique, defendants herein, on the trial of the rule to show cause why an injunction pendente lite should not be issued.

Counsel for the above named defendants offers, reads, and files in evidence the following affidavits and exhibits:

1. The affidavit of William H. Hendren, local manager of Texas Transport & Terminal Company, agent for Compagnie Generale Transatlantique, sworn to before Charles F. Fletchinger, notary public, Parish of Orleans, State of Louisiana, November 7, 1910.

96 Affidavit of William H. Hendren, and Exhibits annexed thereto, omitted per instructions.

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105 NOTE OF EVIDENCE ON BEHALF OF BANK OF MULHOUSE ON RULE FOR INJUNCTION PENDENTE LITE.

Filed December 2, 1910.

United States District Court, Eastern District of Louisiana.

J. A. E. Pyle, Trustee,
vs. No. 14,240
Texas Transport and Terminal Company et als.

Note of Evidence on Behalf of Bank of Mulhouse, Defendant Herein, on the Trial of the Rule to Show Cause Why an Injunction Pendente Lite Should Not Be Issued.

Counsel for the above-named defendant offers, reads and files in evidence the following affidavits and exhibits:

1. The affidavits of Frans Lyzell, director of the Bank of Mulhouse; of Elisee Paul Dubois, managing director of the Societe Generale; of Emile Level, managing director of the Comptoir d'Escompte de Mulhouse; and of Alphonse Riss, manager of the firm of Paul Chardin, in Havre, all sworn to before John Preston Beecher, Vice Consul of the United States at Havre, France, on October 24, 1910.

2. Affidavit of J. P. Blair, before Henry H. Chaffe, notary public, November 9, 1910, and copies of the nine drafts

annexed to said affidavit purporting to be the drafts referred to in the affidavit of said ————————.

3. Affidavit of J. P. Blair before Henry H. Chaffee, notary public, November 9, 1910, and the exhibits annexed thereto, namely, duplicate copies of the nine through bills of lading and the nine custody bills of lading referred to in the affidavit of ————————

4. Affidavit of J. P. Blair, sworn to before Henry H. Chaffe, notary public, November 9, 1910, and the exhibits annexed thereto, namely, two notes from Scheuch and Company, dated May 3rd and May 7th, 1910, and pur-
106 porting to transmit to the Bank of Mulhouse certain custody bills of lading therein mentioned and purporting to be the notes referred to in the said affidavit of Frans Lyzell.

5. Affidavit of Albert Schilling of November 18, 1910, with the two letters of December 8th and December 23rd, 1909, embodied therein.

6. Affidavits of Frans Lyzell, Elisee Paul Dubois and Emile Level before John Preston Beecher, U. S. Vice Consul, November 18, 1910.

7. Affidavit of Albert Schilling and of Ferd. Scheuch, entitled and numbered in this cause before the said John Preston Beecher, U. S. Vice Consul, November 18, 1910.

107 Affidavits and Exhibits annexed thereto, offered on behalf of the Bank of Mulhouse, omitted per instructions.

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295 RESUMED HEARING ON APPLICATION FOR INJUNCTION PENDENTE LITE.

Extract from the Minutes.

November Term, 1910.

New Orleans, Saturday, December 3rd, 1910.

Court met pursuant to adjournment.

Present: Hon. Rufus E. Foster, Judge.

J. A. E. Pyle, Trustee,
vs. No. 14,240
Texas Transport and Terminal Company, et al.

The hearing of this cause, as continued from Friday, December 2nd, was this day resumed.

Present: The solicitors for all parties in interest.

Whereupon, after hearing further argument, the cause was submitted, and taken under advisement.

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296 OPINION OF THE COURT ON APPLICATION FOR INJUNCTION.

Filed January 2, 1911.

United States District Court, Eastern District of Louisiana.

J. A. E. Pyle, Trustee,
vs. No. 14,240
Texas Transport & Terminal Company et al.

In this case, complainant, the trustee of Steele, Miller & Co., bankrupts, brings his bill against the Compagnie Generale Transatlantique, the Texas Transport & Terminal Co., F. Scheuch & Co., and the Bank of Mulhouse, to set aside certain alleged preference to the two last named defendants. He alleges, in substance, that Steele, Miller & Co., who were in the cotton exporting business, sold 900 bales of cotton to Scheuch & Co., and forged certain bills of lading purporting

to show its shipment, which with other documents, usual in cotton transactions, also fraudulent, were attached to drafts drawn by them on the Bank of Mulhouse with which Scheuch & Co. had arranged for credit, and in that way they became indebted to the said bank in the amount of 345,495.31 francs, equalling $66,313.87. That, after obtaining the discounting of these drafts, they acquired 900 bales of cotton and shipped them to New Orleans. When the cotton arrived at New Orleans it was received by Steele, Miller & Co.'s shipping agents, and by them delivered to the Compagnie Generale Transatlantique, through the Texas Transport & Terminal Co., and certain custody bills of lading were issued for it. The cotton was marked to correspond with the documents attached to the drafts previously discounted. After that, Steele, Miller & Co. sent the custody bills of lading to Scheuch & Co. at Havre, with instructions to substitute them for the fraudulent bills of lading annexed to the drafts, and they were delivered to the bank. He alleges that Scheuch & Co. and the Bank of Mulhouse knew, or had reasonable cause to know,
297 that Steele, Miller and Co. were insolvent and that the substitution of the bills of lading was intended to act as a preference. That as the transactions were within four months of the bankruptcy of Steele, Miller & Co., and voidable, he elects to avoid them.

Complainant contends the Bank of Mulhouse bought the drafts and a preference was attempted by substituting valid securities for those wholly bad. The bank contends it was the actual purchaser of cotton, and that by marking the 900 bales to correspond with the fraudulent documents, and shipping it, Steele, Miller & Co. appropriated it to them. That they had no notice, actual or constructive, of the insolvency of Steele, Miller & Co. and did not know, and had no reason to believe, the substitution of the bills of lading was intended as a preference, and, therefore, if a preference, it is not voidable.

The matter is now before me solely on an application for a preliminary injunction to prevent the removal of the cotton out of the United States.

The Bank of Mulhouse has appeared by counsel, but has filed only what it terms a limited appearance. Both sides have submitted certain affidavits, and exhibits, tending to prove their respective contentions. It is urged by the bank that an

injunction pendente lite in this case would be equivalent to a seizure of their property, and that it is entitled to the delivery of the cotton, no matter what may be the ultimate outcome of the suit.

I fully appreciate it is the rule that a preliminary injunction will not issue unless it is probable the complainant will ultimately be granted the relief prayed for, but I must consider all aspects of the case. If the trustee has any rights at all it is to recover the property itself.

298 I also understand it to be the rule that whenever equity will enforce a claim in or to specific property, an injunction will properly issue, pending the suit, to prevent a transfer that would interfere with or prejudice the ultimate relief to which complainant may be entitled with respect to said property.

The cotton is still in the custody of the carrier at the port at which they received it, and the bank is not entitled to it if complainant makes out his case. Instead of coming into Court to assert its rights the bank had endeavored to avoid submitting itself to the jurisdiction of this Court while attempting to receive the greatest possible benefit.

The case here presented by the affidavits is a close one, and it may be that the bank will prevail on final determination. But I cannot bring myself to decide this important question on ex parte affidavits, more especially when there are no pleadings of the bank before me, I consider that as to the question of whether the preference is voidable or not, complainant is entitled to have issue joined and to search the conscience of the defendants comformably to the principals of equity.

If the property goes out of the jurisdiction of this Court, pending the determination of the merits, the trustee, if he prevails, will have an empty victory and will have to pursue the defendants to France. While I have no doubt of the probity and learning of the French Courts, I may be pardoned for indulging the presumption that the Courts of the United States are as competent and will as surely deal justly between the parties. Had there been a full and complete appearance by the defendants, I would still consider the interests of justice to be best subserved by detaining the property within the jurisdiction of this Court, as

299 I must take notice that the French Courts accord no conclusiveness to the judgments of the Courts

of the United States. Even after a full and complete trial on the merits in this Court, the trustee, it [if] successful, would be obliged to try his case anew and again offer all his evidence in the French Court. If the property is detained within its jurisdiction it is evident this Court can fully enforce any decree that it may make, it will be easy to minimize any damage the bank is liable to suffer by selling the cotton and depositing the proceeds. In fact it would seem the transportation company is entitled to relief of this kind. So, too, the property may be released to the bank on its furnishing an adequate bond, or, if the security already given by the trustee is not sufficient to protect all parties, it can be increased.

I will entertain motions for relief in conformity with the above views, at any time. In the meanwhile and to preserve the status quo an injunction pendente lite will issue.

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300 DECREE ON APPLICATION FOR INJUNCTION.

Extract from the Minutes.

November Term, 1910.

New Orleans, Monday, January 2nd, 1911.

Court met pursuant to adjournment.

Present: Hon. Rufus E. Foster, Judge.

J. A. E. Pyle, Trustee,

vs. No. 14,240

Texas Transport and Terminal Company et al.

This case came on at this term to be heard upon the application of complainant for an injunction pendente lite, and was argued by the solicitors for the respective parties, and submitted, when the Court took time to consider.

Upon due consideration whereof, and for the reasons assigned in writing, and on file,

It is ordered that an injunction pendente lite issue herein as prayed for.

301 INJUNCTION.

Issued January 2nd, 1911.

United States of America.

District Court of the United States, Eastern District of Louisiana.

J. A. E. Pyle, Trustee,
vs. No. 14,240
Texas Transport & Terminal Company et als.

The President of the United States of America,

To the Texas Transport & Terminal Company and the Compagnie Generale Transatlantique—Greeting:

Whereas, it has been represented unto us in our said District Court on the part of J. A. E. Pyle, trustee in bankruptcy of Steele, Miller & Company, in a bill in equity lately exhibited against you and each of you, touching certain matters and things therein set forth.

Now, therefore, in consideration of the premises and of the allegations in said bill in equity contained, you, the said Texas Transport & Terminal Company and the said Compagnie Generale Transatlantique, your attorneys and each of you, are hereby commanded and strictly enjoined, under the penalty of the law, that you absolutely refrain and desist from removing from the jurisdiction of this Court the 900 bales of cotton described in the bill filed in this cause, and that you remain so inhibited and enjoined until the further order of our said Court in the premises.

Witness, the Honorable Rufus E. Foster, Judge of said Court, at the City of New Orleans, this second day of January, in the year of our Lord, 1911.

[Seal] (Signed) FRANK H. MORTIMER,
Clerk.

Clerk's Office:
A true copy.
[Seal] (Signed) FRANK H. MORTIMER,
Clerk.

302

[Indorsed on back:] No. 14,240. U. S. District Court, Eastern District of Louisiana, New Orleans Division.

J. A. E. Pyle, Trustee, vs. Texas Transport & Terminal Co. et al. Injunction to

MARSHAL'S RETURN ON INJUNCTION.

Filed January 3rd, 1911.

Received by U. S. Marshal, New Orleans, La., Jan. 3/11. And on the same day, month and year, I served the original of which this writ is a certified copy on the Texas Transport and Terminal Company by handing the same to the agent thereof, Mr. W. H. Hendren, in person, in the office of said company, in the City of New Orleans, Louisiana; and on the Compagnie Generale Transatlantique by handing the same to the agent thereof, Mr. N. P. Pedrick, in person, in the City of New Orleans, La.

VICTOR LOISEL,
U. S. Marshal.

(Signed) By E. M. KINLER,
Deputy U. S. Marshal.

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303 MOTION FOR EXTENSION OF TIME AND ORDER.

Extract From the Minutes.

November Term, 1912.

New Orleans, Monday, January 2nd, 1911.

Court met pursuant to adjournment.

Present: Hon. Rufus E. Foster, Judge.

J. A. E. Pyle, Trustee,
vs. No. 14,240
Texas Transport & Terminal Company et al.

Now through its solicitors, Denegre & Blair, comes Bank of Mulhouse, and still appearing specially and qualifiedly, under protest, and not waiving but reserving its right to object to the jurisdiction of this Court, asks the Court to grant it

an extension of time until the next rule day in February to file its exceptions to the jurisdiction or such other responsive pleadings as it may desire to file in this cause.

The foregoing motion having been presented to the Court, it is ordered that the same be and it is allowed.

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304 MOTION TO SELL COTTON.

Filed January 4, 1911.

United States District Court, Eastern District of Louisiana.

J. A. E. Pyle, Trustee,
vs. No. 14,240
Texas Transport & Terminal Company, et als.

On motion of Dufour & Dufour and W. A. Percy, solicitors for complainant herein, and on suggesting to the Court that, on the —— day of May, 1910, at the suit of J. A. E. Pyle, receiver, the Texas Transport & Terminal Company and the Compagnie General Transatlantique were enjoined from removing from the jurisdiction of this Court certain cotton marked as follows:

100 bales	R.	D.	A.	R.
100 bales	R.	U.	R.	A.
100 bales	Q.	A.	T.	R.
100 bales	R.	D.	A.	K.
100 bales	R.	D.	T.	N.
100 bales	R.	B.	S.	A.
100 bales	Q.	A.	A.	R.
100 bales	R.	J.	K.	S.
100 bales	R.	D.	H.	O.

which said cotton was then loaded on the steamship "Texas;" and

On further suggesting that on the 16th day of August, in the within numbered and entitled cause and on the application of mover as trustee, this Honorable Court did grant a restraining order against the Texas Transport & Terminal

Company and the Compagnie Generale Transatlantique, their agents and employees, prohibiting them from removing from the jurisdiction of the Court the cotton herein referred to until the application for the interlocutory injunction prayed for could be determined; and

On further suggesting to the Court that on the 2nd day of January, 1911, this Court granted the application for said interlocutory injunction and directed the issuance of said preliminary injunction against the Texas Transport &
305 Terminal Company and the Compagnie Generale Transatlantique; and

On further suggesting to the Court that the original orders, entered herein on the application of the temporary receiver and on the application of the trustee, gave to all parties at interest the right to apply to this Court for permission to bond said cotton or to otherwise dispose of same, but that the defendants herein, to-wit, Scheuch & Company and the Bank of Mulhouse, have failed to avail themselves of said privilege and right, and that the said Scheuch & Company has not entered any appearance and that the Bank de Mulhouse has only entered a limited appearance for the purpose of contesting the jurisdiction of the Court and objecting to the issuance of the preliminary injunction; and

On further suggesting that the Compagnie Generale Transatlantique and the Texas Transport & Terminal Company have appeared in this cause and pleaded and asked to be relieved of the charge for the said cotton; and

On further suggesting that the cotton herein should be sold and the proceeds deposited in the registry of the Court;

It is ordered: That the Texas Transport & Terminal Company and the Compagnie General Transatlantique, through their solicitor, Mr. George H. Terriberry, show cause on the 6th day of February, 1911, why the cotton in contest herein should not be sold and the proceeds deposited in accordance with the orders of this Court.

It is further ordered: That the Bank de Mulhouse, through its solicitors, Messrs. Denegre & Blair, be served with a copy of this motion.

306 MARSHAL'S RETURN ON MOTION TO SELL COTTON.

Filed January 6, 1911.

Received by U. S. Marshal, New Orleans, La., Jan. 5/11.
And on the 6th day of the same month I served copy hereof on the following parties in New Orleans in the manner following, to-wit: Denegre & Blair by leaving same at their office in the hands of their stenographer, Chas. P. Gould; on Geo. H. Terriberry, by leaving same at his office in the hands of his stenographer, F. E. Zimmerman.

(Signed) VICTOR LOISEL,
U. S. Marshal.

(Signed) By B. F. QUEEN,
Deputy U. S. Marshal.

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307 MOTION OF BANK DE MULHOUSE, COMPTOIR D'ESCOMPTE DE MULHOUSE, PAUL CHARDIN AND SOCIETE GENERALE AND ORDER THAT COMPLAINANT FURNISH ADDITIONAL BONDS.

Extract from the Chancery Order Book.

New Orleans, Wednesday, January 4, 1911.

The following order was made and entered in open Court this day:

J. A. E. Pyle, Trustee,
vs. 14240, 14241, 14242, 14243
Texas Transport & Terminal Company, et als.

Messrs. Denegre & Blair, solicitors for the Bank of Mulhouse, Comptoir d'Escompte de Mulhouse, Paul Chardin, and Societe Generale; Messrs. Dufour & Dufour, solicitors for J. A. E. Pyle, trustee, complainant, and George H. Terriberry, Esq., solicitor for Texas Transport & Terminal Company and

the Compagnie Generale Transatlantique, this day appeared in open Court;

Whereupon, Messrs. Denegre & Blair, solicitors for the parties aforesaid, moved the Court that the complainant furnish additional bonds on the injunction pendente lite issued in the above mentioned causes.

After hearing argument by the solicitors for the respective parties,

It is ordered that complainant, J. A. E. Pyle, trustee, furnish additional bonds, with good and sufficient surety to be approved by the Court, in the sum of ten thousand dollars ($10,000.00), payable to defendants, and conditioned to satisfy any damages suffered by any of them by reason of the issuance of the injunctions pendente lite; said bonds to be filed within five days, and to be apportioned, in amount, in the several causes, as to the quantity of cotton involved in each.

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308 BOND OF TRUSTEE ON INJUNCTION PENDENTE LITE.

Filed January 9th, 1911.

United States District Court, Eastern District of Louisiana.

J. A. E. Pyle, Trustee,
vs. No. 14,240
Texas Transport & Terminal Company, et als.

Know All Men By These Presents: That we, J. A. E. Pyle, trustee of Steele, Miller & Company, bankrupt, appointed by and acting under authority of the District Court of the United States for the Northern District of Mississippi, as principal, and Southwestern Surety Insurance Company of Oklahoma, as surety, are held and firmly bound unto the Compagnie Generale Transatlantique, the Texas Transport & Terminal Company, F. Scheuch & Company and Bank de Mulhouse, defendants herein, for the use and benefits of defendants in the below mentioned suit, in the full and true sum of three thousand eight hundred dollars ($3,800.00), lawful

money of the United States of America, for the payment whereof we bind ourselves, our heirs, executors, successors and assigns firmly by these presents.

Thus done and signed in the City of New Orleans, State of Louisiana, this 9th day of January, A. D. 1911.

Now, therefore, the condition of the above obligation is such that,

Whereas, the said J. A. E. Pyle, trustee in bankruptcy of Steele, Miller & Company, did in the proceedings No. 14,240 of the docket of the United States District Court for the Eastern District of Louisiana, entitled J. A. E. Pyle, Trustee, vs. Texas Transport & Terminal Company, et als., obtain an injunction pendente lite, restraining and enjoining the Texas Transport & Terminal Company and the Compagnie Generale Transatlantique and each of them, and each of their servants, agents and employees until the further orders of the Court from removing from the jurisdiction of the
309 Court the 900 bales of cotton described in the pleadings filed in this cause upon condition that the said trustee shall furnish bond.

Now, therefore, if the above mentioned J. A. E. Pyle, trustee, shall pay, or cause to be paid, all damages caused by the issuance of said injunction pendente lite, and the costs of this cause in connection therewith in the event that said injunction pendente lite is dissolved or vacated as having been wrongfully issued, or because the said acts are improperly enjoined, then this bond to be void, otherwise to remain in full force and effect.

J. A. E. PYLE, Trustee.
(Signed) By WM. C. DUFOUR, Solicitor.
SOUTHWESTERN SURETY INSURANCE CO.
(Signed) By JOS. BAYLE,
Atty. in Fact. [Seal]

Approved.

(Signed) RUFUS E. FOSTER, Judge.

310 DEMURRER TO JURISDICTION.

Filed January 10, 1911.

United States District Court, Eastern District of Louisiana.

J. A. E. Pyle, Trustee,
vs. No. 14,240
Texas Transport and Terminal Company et als.

Now comes Bank of Mulhouse, made a defendant herein, and, appearing specially under protest for the purpose of demurring to the jurisdiction of this Court, and for no other purpose, says that the Court is without jurisdiction in this cause, for the following reasons:

That it appears from the bill of complaint that this is a suit brought under Section 60, Subdivisions a and b of the Bankruptcy Act of the United States, being the Act of Congress adopted July 1, 1898, and its amendments, to set aside the alleged voidable transfer to this defendant of the certain cotton described in the bill of complaint; that it further appears from said bill that this defendant, the transferee, is not a citizen or inhabitant or resident of this State or of the United States, but is a citizen, inhabitant and resident of the Republic of France, and that it has not been personally cited or served with any process of Court in this cause; that it is not shown by the said bill that any of its co-defendants has any authority to stand in judgment for this defendant; that the bill fails to state a case within the jurisdiction of this Court to give the relief, either interlocutory or final, prayed for by complainant.

Wherefore, defendant prays that his demurrer be sustained and this cause dismissed, with reservation of this defendant's rights to recover its costs and all damages sustained from the injunctive orders heretofore rendered in this cause.

(Signed) DENEGRE AND BLAIR,
Solrs for above named Defendant.

311 J. P. Blair, being duly sworn, deposes and says that he is of counsel for the said Bank of Mulhouse, which is absent from the State and unrepresented save by its said counsel and solicitors of record; that the foregoing de-

murrer was not filed for purposes of delay; and affiant further states and certifies that in his opinion said demurrer is good in point of law.

(Signed) J. P. BLAIR.

Sworn to and subscribed before me this 10th day of January, 1911.

[Seal] (Signed) HENRY H. CHAFF,
Notary Public.

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312 MOTION TO SET DOWN FOR ARGUMENT DEMURRER OF BANK OF MULHOUSE.

Filed January 12th, 1911.

United States District Court, Eastern District of Louisiana.

J. A. E. Pyle, Trustee,
vs. No. 14,240
Texas Transport & Terminal Company, et als.

Now comes J. A. E. Pyle, trustee, complainant herein, through his undersigned solicitors, William C. Dufour and H. Heneres Dufour, and sets down for argument the demurrer herein filed by the Bank de Mulhouse, defendant herein.

(Signed) WM. C. DUFOUR,
(Signed) H. GENERES DUFOUR.

313 HEARING AND ORDER—DEMURRER OVERRULED.

Extract from the Minutes.

November Term, 1910.

New Orleans, Friday, January 13th, 1911.

Court met pursuant to adjournment.

Present: Hon. Rufus E. Foster, Judge.

J. A. E. Pyle, Trustee,
vs. No. 14,240
Texas Transport and Terminal Company, et al.

The demurrer filed by the Bank of Mulhouse, a defendant herein, set for hearing this day, was called.

Present: Messrs. Dufour & Dufour, Solicitors for Complainant.

Present: Messrs. Denegre & Blair, Solicitors for Bank of Mulhouse, Defendant.

Whereupon, after hearing the solicitors for the respective plainant.

It is ordered that the said demurrer be, and it is hereby overruled.

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314 ANSWER OF THE BANK OF MULHOUSE.

Filed Feb. 6, 1911.

United States District Court, Eastern District of Louisiana.

J. A. E. Pyle, Trustee,
vs. No. 14,240
Texas Transport and Terminal Company, et als.

Answer of the Bank of Mulhouse.

Now comes the Bank of Mulhouse, made one of the defendants herein, and, not waiving but reserving the benefit of its

demurrer heretofore filed to the jurisdiction of this Court, and not consenting to but protesting against the exercise of jurisdiction in this cause, this defendant now, and at all times saving to itself any and all manner of benefit or advantage of exception or otherwise, that can or may be had or taken to the many errors, uncertainties and imperfections in the said bill contained, for answer thereto, or to so much thereof as this defendant is advised it is material or necessary for it to make answer to, answering, says:

1. It admits and avers that this defendant is and was at all times hereinafter set forth, and for some time prior thereto, a banking institution duly incorporated and existing under the laws of the Republic of France, domiciled and engaged in the banking business in the City of Havre, France, including the purchase of cotton, as well as the furnishing and advancing of funds for the purchase thereof, and taking and holding title thereto.

2. It says that for want of sufficient information, it can neither admit nor deny the allegations contained in paragraphs "Second" and "Third" of the complaint in respect to the domicile, membership and business of the firm of Steele, Miller and Company, the institution of proceedings of involuntary bankruptcy against said firm, the adjudication of bankrutcy, the appointment of complainant as receiver and his subsequent election as trustee in bankruptcy, and it
315 leaves complainant to his proof.

3. It denies the statement contained in paragraph "Fourth" of the complaint, that on or prior to April 15, 1910, the relations between Steele, Miller and Company and this defendant were those of debtor and creditor, Steele Miller and Company being indebted to it in the sum of 345,495.30 francs, or $66,313.87 in United States currency; it avers that it extended no credit and made no loan of money to Steele, Miller and Company, and that the obligation of Steele, Miller and Company on the date above named and prior thereto was not to pay this defendant a sum of money but to deliver or cause to be delivered to it nine hundred bales of cotton which this defendant had already paid for, as will hereafter be more fully set forth.

It avers that it is not familiar with the fraudulent practices of Steele, Miller and Company and is unable to affirm or deny the correctness of the statements in respect thereto found in paragraph "Fourth" of the complaint, and leaves complainant to his proof thereof.

It admits and avers that sales and purchases of cotton are usually made and effected by the drawing and acceptance of drafts with bills of lading covering the cotton attached thereto; it avers that such drafts are accepted and paid under the belief that the title to and possession of the cotton so sold and purchased are vested in the acceptor by such acceptance and the delivery of the bill of lading.

4. It admits that the statements contained in paragraph "Fifth" of the complaint and Exhibit A thereof are substantially correct. It avers that each of said drafts represented the purchase price of a lot of 100 bales of cotton and an identifying description of said cotton by lot numbers and marks was set forth on the face of the draft, the same corresponding with the description in the bill of lading attached thereto.
316 It denies that said drafts were accepted and paid by it for the purpose of "buying the bills of lading thereto attached," as charged in said paragraph "Fifth," and avers that the same were accepted and paid for the purpose of buying the cotton described in the drafts as well as in the bills of lading and for the purpose of obtaining the bills of lading which it believed represented the cotton and the possession of which it believed gave it the title to and full dominion over the cotton; that it believed at the time that the bills of lading were genuine and that the cotton described therein and in the drafts had been actually shipped at or about the dates of said drafts, but that, from information received subsequent to May 7, 1910, and chiefly as a result of the investigations made in said bankruptcy proceedings, it now believes that said bills of lading were forgeries, and that Steele, Miller and Company thus fraudulently deceived this defendant into believing that at the same time that it paid for the cotton by acceptance of the drafts, it was receiving symbolically title to and possession of the cotton. It denies that it thus became a creditor of Steele, Miller and Company in a sum representing the amount of said drafts; it avers, on the contrary, it became entitled to demand and receive from Steele, Miller and Company the nine

hundred bales of cotton which had been paid for by said drafts and Steele, Miller & Company were legally bound to make good their defaults by securing, marking, forwarding, and delivering to this defendant the cotton covered by said drafts and purporting to be covered by said spurious bills of lading.

5. It admits that the statements contained in paragraph "Sixth" of the complaint in respect to the business of Scheuch and Company are substantially correct, except the statement that the nine hundred bales of cotton referred to in the complaint were sold to Scheuch and Company. It believes, and so avers, that the legal and intended effect of the transactions in respect to said cotton was a transfer of the title and of full dominion over the same to this defendant who was the party that paid the seller the purchase price; that it is not material for the purposes of this suit whether the ultimate purchaser was this defendant or Scheuch and Company, since, in any event, Steele, Miller and Company agreed and bound itself to sell and deliver the said cotton, received the price thereof, and, by subsequently shipping the cotton in question, simply carried out its aforesaid original obligations, and completely divested itself of the ownership and possession of said property.

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For want of sufficient information it neither admits nor denies the statements in said paragraph "Sixth" in respect to the insolvency of Steele, Miller and Company prior to April 1, 1910, and the issuance and negotiation by it of drafts with spurious bills of lading attached thereto to other persons in various parts of the world in an amount approximating 3,000,000 of dollars, and leaves complainant to his proof thereof. It specially denies that it knew of, or had any reasonable ground for suspecting said insolvency or said fraudulent practices.

6. It admits that it is substantially correct, as stated in paragraph "Seventh" of the complaint, that on or prior to April 6, 1910, Steele, Miller and Company had collected or had in its possession 900 bales of cotton marked as stated in the complaint, which marks correspond with the marks of the cotton on the said drafts and the bills of lading attached thereto, and that said cotton was then shipped by Steele, Miller and Company under inland bills of lading to the order

of Steele, Miller and Company, and that, when said cotton reached New Orleans, the said bills of lading were exchanged for ocean bills of lading, one dated April 19, two April 20th, one April 22nd, and five dated April 25, 1910, which two sets of bills of lading in respect to the marks of the cotton covered thereby, the dates, etc., are described with substantial correctness in exhibits B and C of the complaint; but this
318 defendant asks leave to refer for greater certainty to said bills of lading or proven copies thereof which may be produced on the trial. It does not know, and has no means of knowing, how long prior to April 6, 1910, Steele, Miller and Company had acquired, assembled and marked said cotton.

It avers that the acquiring, assembling and marking of said cotton as aforesaid had for its intended and legal effect to appropriate said cotton to the obligations of Steele, Miller and Company under the said original transactions with this defendant, whereby it paid for said cotton and became entitled thereto; that the further legal and intended effect of said acts of Steele, Miller and Company was to give to this defendant the same right, title and interest in and to said cotton as it would have had if said cotton had been originally shipped under the original bills of lading attached to the drafts as aforesaid.

It avers that it did not know and had no reason to believe or suspect, until the fraudulent practices of Steele, Miller and Company were disclosed to it through the said bankruptcy proceedings some time subsequent to May 7, 1910, that said cotton had not been shipped contemporaneously with the drawing of said drafts; and, accordingly, it avers that the subsequent acts of Steele, Miller and Company to make good its default, perform its obligations, and deliver to this defendant the cotton it had paid for and was entitled to receive, were done and accomplished without its procurement or knowledge.

7. It again denies that on or about April 15, 1910, this defendant and Scheuch and Company, or either of them, were ordinary unsecured creditors of Steele, Miller and Company in the sum of $66,313.87, represented by the said drafts with the forged bills of lading attached, and again avers that the obligation of Steele, Miller and Company was to deliver 900 bales of cotton, not to pay a certain sum of money. It admits

and avers that on or about the date of their issuance Steele,
Miller and Company deposited in the United States
319 mail said ocean or port bills of lading, representing
said 900 bales of cotton, addressed to Scheuch and Company. It avers that said bills of lading were negotiable in form, to the order of Steele, Miller and Company and by it indorsed in blank, and represented said cotton; that said bills of lading were mailed to Scheuch and Company for this defendant, and that the deposit of said bills of lading in the mail operated at once a transfer of the title to and possession of said cotton to this defendant; that the acts of Steele, Miller and Company in obtaining and forwarding said port bills of lading was in furtherance of said acts of appropriation and a performance and consummation of their original obligations in the premises. It avers that said port bills of lading were delivered into its physical possession by Scheuch and Company, three, covering the cotton marked R. D. H. O., R. D. A. M., and Q. A. A. R., on May 3rd, and the remaining six on May 7, 1910, and it has ever since had possession thereof as well as of the bills of lading attached to said drafts.

It denies that the forwarding to it by Steele, Miller and Company of said port bills of lading was done with the intent to prefer it or Scheuch and Company, or either of them, over the other creditors of Steele, Miller and Company. It denies that when said bills of lading were mailed to Scheuch and Company for this defendant or when the same were received and delivered to this defendant, it knew or ought to have known or had reasonable cause to believe that a preference was thereby given and intended; or knew or had reasonable cause to believe that Steele, Miller and Companay was insolvent. It denies that the performance by Steele, Miller and Company, as aforesaid of its obligation to deliver the cotton which it had agreed to deliver and which it had been paid for constituted any preference within the meaning of the Bankrupcy Act. It denies that it constituted any voidable preference in favor of this defendant for the additional reason that
it was unaware at the time of the acts of Steele,
320 Miller and Company now charged to constitute a
preferential transfer, and because it believed and had reasonable cause to believe at the time that the cotton, the transfer of which to it is now sought to be avoided, was cotton shipped at the time of the drawing of said drafts, had

been fully paid for by it, belonged to it, and that it was justly and exclusively entitled thereto.

For want of sufficient information it neither affirms nor denies the statements contained in said paragraph "Eighth" in respect to the insolvency of Steele, Miller and Company and leaves complainant to his proof thereof. It denies that it knew or should have known at the time of the transfer to it of said cotton that Steele, Miller and Company was insolvent. It avers that even knowledge of such insolvency would not have given it reasonable cause to believe that it was being given a preference because, as it again states, it was unaware of the original default and subsequent acts done to make good the default, and because it had known thereof, it would still reasonably have believed that it was justly entitled to the cotton it had paid for, whether Steele, Miller and Company was insolvent or not at the time of the shipment thereof.

8. It admits that the statements contained in paragraph "Ninth" of the complaint are substantially correct, but it asks leave to refer to the proceedings in said cause No. 14,219 of Pyle vs. Philip Landgren for greater certainty as to the location of the cotton at the date of the institution of said cause and as to its subsequent disposition.

9. Further answering, this defendant says that for more than three years past Steele, Miller and Company has been engaged in the business, among other things, of selling cotton to or through Scheuch and Company, a commercial firm, which is now and was at all times hereafter set forth and for some time prior thereto, domiciled and engaged at Havre, France,
321 in the business of buying, selling and importing cotton; that, according to the regular course of business, cotton, the sale of which had been negotiated, would be shipped by Steele, Miller and Company under through bills of lading to shippers' orders, notify Scheuch and Company, each of which bills of lading being for one hundred bales, indorsed in blank by shippers, would be forwarded to Havre attached to a draft for the full price of the cotton covered thereby (less freight, insurance and six per cent loss in weight) drawn by Steele, Miller and Company on some bank in Havre which had agreed to take and pay for the said cotton, the cotton being described in the draft, as well as

in the bill of lading, by number of bales and marks, which is the customary method of describing and identifying lots of cotton intended to be sold; that said documents would be presented to the drawee bank in France by some third person for Steele, Miller and Company, and it was the intended and legal effect of the acts and doings of the parties in the premises that, on the acceptance of any such drafts (the same being sixty or ninety days drafts) title to the cotton, described as aforesaid in the draft and in the bill of lading, should thereupon become vested in the person obligating himself by such acceptance to pay the price thereof, and the indorsed bill of lading was surrendered at the time to the acceptor of the draft as one of the means of transferring title and possession and as evidence thereof and to enable the holder to obtain possession of the cotton from the carrier on arrival at Havre. That during the period aforesaid of upwards of three years many thousands of bales of cotton were so shipped and disposed of by Steele, Miller and Company, and paid for and possession thereof secured by through bills of lading and drafts as aforesaid, there being always attached to the bill of lading a certificate of insurance and an invoice showing correspondence of the amount of the draft with the price of the cotton, and in many of said transactions this defendant, the Bank of Mulhouse, was the drawee of the draft and accepted and paid the same

322 and received the cotton in due course from the ocean carrier on surrender of the bill of lading.

That in the regular course of business which had been going on as aforesaid for a number of years, Steele, Miller and Company drew on this defendant nine certain drafts, each dated at Corinth, Mississippi, to drawers' order, and by them indorsed, payable ninety days after sight—

One numbered 2006, for 40,217.90 francs, dated December 28, 1909, and reciting that it was drawn against 100 bales of cotton marked R D A R 1/100.

One numbered 2007, for 40,697.65 francs, dated December 28, 1909, and reciting that it was drawn against 100 bales of cotton marked R U R A 1/100.

One numbered 2008, for 41,333.80 francs, dated December 28, 1909, and reciting that it was drawn against 100 bales of cotton marked Q A T R 1/100.

One numbered 2100, for 36,680.00 francs, dated January

21, 1910, and reciting that it was drawn against 100 bales of cotton marked R D A K 1/100.

One numbered 2122, for 37,515.40 francs, dated January 22, 1910, and reciting that it was drawn against 100 bales of cotton marked R D T N 1/100.

One numbered 2122, for 37,515.40 francs, dated January 26, 1910, and reciting that it was drawn against 100 bales of cotton marked R D H O 1/100.

One numbered 2122, for 37,515.40 francs, dated January 26, 1910, and reciting that it was drawn against 100 bales of cotton marked R B S A 1/100.

One numbered 2124, for 37,225.15 francs, dated January 26, 1910, and reciting that it was drawn against 100 bales of cotton marked R J K S 1/100.

One numbered 2123, for 37,689.50 francs, dated
323 January 26, 1910, and reciting that it was drawn against 100 bales of cotton marked Q A A R 1/100.

That each of the above described drafts was presented to this defendant at Havre for acceptance and was by it accepted and afterwards when it became due paid in full by this defendant; drafts numbered 2006, 2007 and 2008 having been accepted on January 10th, drafts numbered 2100 and 2101 on February 2nd, and drafts numbered 2125, 2122, 2124 and 2123 on February 8th; that to each draft there was attached what purported to be a through bill of lading covering the same cotton described in the draft and an invoice showing correspondence between the amount of said draft and the price to be paid for the cotton, together with an insurance certificate in the usual form, all of which documents were surrendered to this defendant on the acceptance of the draft.

That, believing and relying upon the representations conveyed and the obligations imposed by the drawing and forwarding of said drafts, with the documents attached, and believing that said cotton had actually been shipped and that acceptance of said drafts, as well as the possession and ownership of the bills of lading (obtained through such acceptance) would transfer to it the title to said cotton and the right to receive the same on its arrival, this defendant accepted said drafts (which it subsequently paid) and accepted the transfer and delivery of the bills of lading, with the attached certificates of insurance and invoices, which documents are still in its possession.

That no part of said cotton has ever come into the hands of this defendant except through the constructive delivery and possession effected by its holding and ownership of the bills of lading representing the same as herein set forth; that while it was awaiting the arrival of said cotton it received by mail from Steele, Miller and Company, through Scheuch
324 and Company, on May 3rd and 7th, 1910, the nine bills of lading issued as aforesaid by the Compagnie Generale Transatlantique acknowledging the receipt from Steele, Miller and Company of the said nine lots of one hundred bales each, with the said identifying marks, for shipment to Havre and delivery there to shippers' order, notifying Scheuch and Company, which bills of lading were indorsed in blank by Steele, Miller and Company, forwarded at or about the dates of their issuance, and have ever since been, and now are, in the possession of this defendant. That the next news this defendant received concerning the said cotton was the cable report of the aforesaid proceedings instituted on May 7th, 1910, which resulted in the injunction restraining the master of the steamship "Texas" and its aforesaid owner and agent from removing said nine hundred bales and other cotton out of the jurisdiction of this Court, on the ground that the shipment of said cotton by Steele, Miller and Company constituted the giving or attempt to give a preference or an attempt to hinder and delay their creditors in violation of the bankruptcy laws of the United States; and this defendant learned from the report of said proceedings for the first time that it was alleged or charged that the original through bills of lading attached to the drafts paid by it were forgeries and it then for the first time had reasonable cause to believe that the said nine hundred bales of cotton which it had paid for as aforesaid had not been shipped on the dates it had until then believed the same to have been shipped, namely, on the dates of the said original through bills of lading. This defendant accordingly avers that, if it be true that said bills of lading attached to said drafts were forged and spurious and if Steele, Miller and Company did not deliver the cotton described therein to the said railroad company at the dates of said bills of lading, but at a subsequent date, this defendant was in entire ignorance thereof, and never knew and had no reasonable cause to believe, that it had been the victim of any such fraud

until after the proceedings in this Court against
325 Steele, Miller and Company had been instituted between May 7th and 13th, 1910, and brought to its attention; and until such proceedings it rested secure in the belief that the cotton it had paid for was on its way to Havre and would be delivered to it on surrender of said through bills of lading.

That subsequent investigation, in the light of the disclosures evoked by the bankruptcy proceedings of Steele, Miller and Company, has led this defendant to believe that the said nine hundred bales of cotton were not delivered to the said railroad company at the dates of said through bills of lading; and it avers that Steele, Miller and Company either had said cotton in its possession at the time or subsequently acquired the same for the purpose of delivering it to this defendant; and that a some time prior to April 6, 1910, Steele, Miller and Company marked said cotton, each lot of one hundred bales, to correspond with said drafts and attached documents, for the purpose and with the effect of appropriating the same to said drafts and the rights of this defendant in the premises; and in further appropriation of said cotton and in further performance of their obligation to deliver the same to this defendant, from whom they had received full payment therefor, Steele, Miller and Company, as this defendant is informed and believes, delivered each of said 100 bale lots of cotton so marked to the said various railroad companies for transportation to the Port of New Orleans, and thence by steamship of the "French Line" for transportation to Havre and delivery to this defendant.

That said cotton reached the Port of New Orleans on various dates prior to April 25, 1910; that Steele, Miller and Company, then acting through their local agent or representative, delivered up the railroad bills of lading under which the cotton had been brought to New Orleans and received in exchange therefor the said bills of lading issued by the Com-
pagnie Generale Transatlantique as aforesaid and
326 transmitted the same to this defendant; that the actual and intended effect of the aforesaid acts and doings of Steele, Miller and Company was to deliver to this defendant the said nine hundred bales of cotton, to the delivery of which it was entitled and the purchase price of which it had fully paid, as long ago as January and February, 1910.

That the fact that the said original through bills of lading were forged or spurious did not destroy, or essentially alter the nature of, the rights and obligations of the parties; that Steele, Miller and Company became bound, if they did not have the cotton, to acquire the same and deliver it to this defendant, and this defendant became entitled to said cotton as soon as acquired and appropriated to the obligation arising out of the aforesaid transactions; that accordingly this defendant became entitled to said 900 bales of cotton as soon as Steele, Miller and Company made a definite and specific appropriation thereof in fulfillment of their aforesaid obligation, which was done as soon as that firm selected said nine hundred bales of cotton and marked the same to correspond with said first set of railroad bills of lading and the drafts to which they were attached, and certainly was such appropriation effected when it subsequently delivered said cotton so marked to the carrier for transportation to New Orleans and thence to Havre, for the purpose of being delivered to this defendant, by whom the cotton had already been fully paid for as aforesaid; and the delivery and transfer of said cotton to this defendant was consummate and perfected by the delivery of the same to the ocean carrier and the forwarding of said ocean bills of lading therefor to this defendant.

That, prior to the institution of the said cause No. 14,219, and prior to any bankruptcy proceedings anywhere against Steele, Miller and Company, said firm had received payment in full for said cotton and had completely divested itself of the title, ownership and possession of said cotton, and
327 the same had been completely vested as aforesaid, in this defendant; that at the time when this defendant acquired its right or title to said cotton it did not know and had no reasonable ground for believing that a preference was being given or intended by the transfer to it of such right and title; that accordingly its right and title to said cotton is superior to that of the complainant trustee.

10. It avers that it has fully set forth the facts constituting the transactions between it and Steele, Miller and Company and that it has a right to ask this Honorable Court, as it now does, to define, recognize and enforce its rights in, to or in respect to said cotton; that whether it has the full and complete title thereto, as it is advised and so claims, or

whether it has a qualified ownership or special property therein, or an equitable lien or charge or a right in the nature of a pledge, its rights or title to said cotton were not created by any voidable or preferential transfer, are superior to any rights or title of complainant, and entitle it to be awarded said cotton or its proceeds and to a dissolution of the restraining and injunctive orders heretofore issued in this cause, as well as in said cause No. 14,219.

11. It avers that by the procuring or issuing of said alleged spurious through railroad bills of lading for said cotton and forwarding the same to it with said drafts attached and accepting the proceeds of said drafts, Steele, Miller and Company warranted its title to said cotton and that the same had been delivered to the carrier for this defendant and is estopped to deny the same and is estopped to deny this defendant's right and title to the cotton after the same was selected, marked, and appropriated as aforesaid, and this estoppel operates equally against the complainant trustee and the general creditors of Steele, Miller and Company and all other persons who are disputing this defendant's rights to said cotton.

328 12. This defendant respectfully submits that the restraining and injunctive orders issued in said cause No. 14,219 and in this cause were improvidently ordered; that this Court is and was without jurisdiction to render the same or to give complainant the relief he seeks; that at the time of the institution of the said cause No. 14,219 and of the present suit, the bankrupts, Steele, Miller and Company, had parted with both the ownership and the possession of the said nine hundred bales; that neither the receiver nor the trustee in bankruptcy has or had any rights to proceed in rem against said property; that his only remedy was and is a personal suit against the creditors alleged to have received the prohibited preference and this Court has not, and never had, any jurisdiction in personam over this defendant; that the appearance which this defendant has been compelled to make under protest to protect its property as aforesaid should not be construed and cannot be construed as a voluntary appearance giving this Court full jurisdiction over it.

This defendant further admits that should this Court maintain its jurisdiction to decide upon the merits the issues pre-

sented herein, then this defendant is entitled to be awarded the said cotton or its proceeds.

This defendant specially reserves all its rights and claims against the owners and agents of said steamship "Texas," and against said vessel, which it may have in the premises, and especially as the holder and owner of said nine custody bills of lading.

Wherefore, this defendant prays that the said bill of complaint be dismissed for want of jurisdiction in this Court to grant the relief prayed for, the restraining orders and injunction heretofore issued being dissolved, and a reference ordered to ascertain the damage this defendant has sustained by reason of said injunctive orders and its rights to recover the same reserved.

And in the alternative, if its objections to the jurisdiction be overruled, this defendant prays that complainant's demands be rejected and that this defendant be decreed to be
329 entitled to the within described nine hundred bales of cotton and that the same be ordered to be delivered to it or be permitted to be transported by a steamship of the said Compagnie Generale Transatlantique to Havre under and in accordance with the said bills of lading issued by said company. And, likewise, in the alternative, this defendant prays that if this Court rejects its claim to the ownership and possession of said cotton then that the Court will recognize and enforce such special property or equitable lien or charge or other right in or to said cotton or its proceeds to which this defendant is entitled in the premises and which to the Court shall seem meet and just, and for such other and general relief as may be just and equitable.

(Signed) DENEGRE & BLAIR,
Solicitors for Defendant, The Bank of Mulhouse.

330 RULE TO RELEASE COTTON ON BOND, ETC.

Filed February 6, 1911.

United States District Court, Eastern District of Louisiana, New Orleans Division.

J. A. E. Pyle, Trustee,
vs. No. 14,240.
Texas Transport and Terminal Company, et als.

On motion of Denegre and Blair, solicitors for the Bank of Mulhouse, a defendant herein, still appearing as heretofore under protest and reserving the benefit of its demurrer to the jurisdiction of this Court, and, on suggesting to the Court that said defendant desires to release the cotton referred to in the complainant's bill from the operation of the injunctive orders herein rendered by substituting a bond therefor so that said cotton may be free from any claims of any of the parties to this cause and from any costs or charges growing out of this cause,

It is ordered that the complainant and defendants, the Texas Transport and Terminal Company and the Compagnie Generale Transatlantique, show cause on Friday, February 10, 1911, at 11 A. M., why said cotton should not be released and delivered to said defendant or the Compagnie Generale Transatlantique for transportation to Havre and delivery to this defendant or the holder of the bills of lading of said Compagnie Generale Transatlantique issued therefor, free from all claims of the parties hereto whether for the cotton or for any costs, expenses or damages incurred or sustained in consequence of this litigation, on this defendant furnishing a bond in favor of complainant, with surety approved by the Court, for the value of said cotton, conditioned upon this defendant producing the said cotton or so much thereof as this Court in this cause may decree the said trustee complainant to be entitled to or paying to said trustee complainant the value of said cotton or of the part thereof to which he may be decreed to be entitled by this Court in this cause, the value to be the value at the time of the release as shown by the amount of the bond; the bond to take the place of the cotton and the giving

of the bond to be otherwise without prejudice to the
331 status, rights or obligations of any of the parties to this cause.

N. O., Feby. 6, 1911.

Service accepted and citation waived.

(Signed) GEO. H. TERRIBERRY,
Atty. for Tex. T. & Term. Co.

(Signed) WM. C. DUFOUR.

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332 ORDER CONTINUING MOTION TO SELL COTTON INDEFINITELY.

Extract From the Minutes, November Term, 1910.

New Orleans, Monday, February 6th, 1911.

Court met pursuant to adjournment.

Present: Hon. Rufus E. Foster, Judge.

J. A. E. Pyle, Trustee,
vs. No. 14,240.
Texas Transport & Terminal Company, et al.

The motion of complainant to sell the cotton enjoined herein, set for hearing this day, was called.

Present: Messrs. Dufour & Dufour, Solicitors for Complainant, Mover.

Present: George H. Terriberry, Esq., Solicitor for Texas Transport & Terminal Co., et als., Defendants.

Present: Messrs. Denegre & Blair, Solicitors for Bank of Mulhouse, Defendant.

Whereupon, after hearing the parties, it is ordered that the said motion be continued indefinitely.

333 ORDER FOR DELIVERY OF COTTON ON BOND.

Filed February 10, 1911.

United States District Court, Eastern District of Louisiana, New Orleans Division.

J. A. E. Pyle, Trustee,

vs. No. 14240.

Texas Transport and Terminal Company, et als.

The rule taken by the Bank of Mulhouse, a defendant herein, for leave to release the cotton referred to in complainant's bill from the operation of the injunctive orders herein entered by substituting a bond therefor came on this day to be heard and was argued by counsel, the plaintiff in rule, the Bank of Mulhouse, being represented by Denegre and Blair, its solicitors of record, the complainant, J. A. E. Pyle, trustee, by Dufour and Dufour, his solicitors of record, and defendants, the Texas Transport and Terminal Company and the Compagnie Generale Transatlantique, by George H. Terriberry, their solicitor of record; and the Court being fully advised in the premises, it is ordered that the nine hundred bales of cotton referred to in the complaint herein and hereafter more particularly described shall be released from the operation of the injunction or restraining orders herein issued or heretofore issued by this Court on the said Bank of Mulhouse furnishing a bond in favor of the complainant trustee, with surety approved by the Court, for the value of said cotton conditioned upon the Bank of Mulhouse producing the said cotton or so much thereof as this Court in this cause may decree the said complainant trustee to be entitled to or paying to said complainant trustee the value of said cotton or the part thereof to which he may be decreed to be entitled by this Court in this cause, the value to be the value at the time of the release as shown by the amount of the bond, the cotton covered by this order being numbered and marked as follows:

R J K S 1/100	R D T N 1/100	R D A R 1/100
R B S A 1/100	R D A K 1/100	Q A A R 1/100
R U R A 1/100	R D H O 1/100	Q A T R 1/100

334 It is further ordered that on said bond being furnished the cotton shall be released and discharged

from all claims of any party to this cause and especially from all claims for any costs, expenses or damages growing out of this litigation or any injunctive orders of this Court, the bond to take the place of the cotton and the giving of the bond to be otherwise without prejudice to the status, rights or obligations of any of the parties to this cause.

It is further ordered that the aggregate value of said nine hundred bales of cotton is hereby fixed at sixty-five thousand, five hundred and thirty-one and 25/100 dollars ($65,531.25), all parties consenting to said valuation, and the amount of the bond herein authorized is fixed at said sum of $65,531.25. It is further ordered that when the bond herein provided for shall have been furnished, the cotton so released shall be free from all costs, charges and expenses, including expenses of insurance, drayage and storage, and said expense of insurance, drayage and storage if not previously paid by the trustee as herein provided, shall be taxed as costs in this suit and shall be recoverable under the bonds heretofore given by the trustee. It is further ordered that the trustee forthwith apply to the Honorable H. C. Niles, United States Judge for the Northern District of Mississippi, for authority to pay the Compagnie Generale Transatlantique the said storage charges and insurance premiums which the Compagnie Generale Transatlantique has either paid out or become liable for in preserving the said cotton, and when said trustee is so authorized he shall have the right to apply to the Court for a proportionate reduction of the several bonds heretofore furnished by him to the extent of said cash payment.

It is further ordered that on defendant, the Bank of Mulhouse, filing with the clerk of this Court a bond of the character and amount above provided for, and which has been approved by this Court or a Judge thereof, all injunctive orders of this Court in respect to said cotton shall be released and dissolved, and the clerk of this Court is directed then to so notify the defendants, the Compagnie Generale
335 Transatlantique and the Texas Transport and Terminal Company.

(Signed) RUFUS E. FOSTER, Judge.

O. K.
(Sgd.) J P B.
G. H. T.
W C D
Feb. 10/11.

336 RELEASE BOND OF BANK OF MULHOUSE.

Filed February 15th, 1911.

United States District Court, Eastern District of Louisiana.

J. A. E. Pyle, Trustee,
vs. No. 14240.
Texas Transport & Terminal Company, et als.

Know all men by these presents, that we, the Bank of Mulhouse, as principal obligor, and the American Surety Company of New York, as surety, are held and firmly bound, jointly and severally, unto J. A. E. Pyle, trustee in bankruptcy for Steele, Miller & Company, Bankrupts, in the sum of sixty-five thousand five hundred and thirty-one 25/100 dollars ($65,531.25/100) for the payment whereof well and truly to be made we bind ourselves, our heirs, executors, administrators and successors, jointly and severally firmly by these presents.

Signed and sealed this 14th day of February, A. D. 1911.

The condition of this obligation is such that,

Whereas, in a certain cause now pending in the United States District Court for the Eastern District of Louisiana, New Orleans Division, No. 14240 of the docket of said Court and entitled, "J. A. E. Pyle, Trustee, vs. Texas Transport & Terminal Company, et als.," the said Pyle made claim to nine hundred bales of cotton fully described in the pleadings in said cause, and obtained from said Court an order or injunction prohibiting the removal of said cotton from the jurisdiction of this Court, and

Whereas, on the tenth day of February, 1911, an order was rendered in said cause giving leave to the said Bank of Mulhouse to release the said cotton from the operation of said injunction by substituting a bond therefore:

Now, therefore, if the said United States District
337 Court in said cause shall decree that the said obligee, the trustee in bankruptcy, is entitled to said cotton or any part of it, and if the said Bank of Mulhouse shall produce said cotton or the part thereof to which the obligee may be so decreed to be entitled to, or pay to the obligee the value of said cotton, or of the part thereof to which the obligee may be so decreed to be entitled, the value to be the value at the

time of the release as shown by the amount of the bond, then this obligation shall be null and void; otherwise to be of full force and effect.

(Signed) BANK OF MULHOUSE,
(Signed) By J. P. BLAIR, Attorney in Fact.
AMERICAN SURETY COMPANY OF NEW YORK,
(Signed) By J. H. FULTON,
Resident Vice-President.

Attest.
(Signed) PETER F. PESCUD, [Seal]
Resident Assistant Secretary.

Approved.
(Signed) RUFUS E. FOSTER, Judge.

Approved. 5036
(Signed) W. C. DUFOUR.

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338 REPLICATION TO ANSWER OF BANK OF MULHOUSE.

Filed March 6, 1911.

United States District Court, Eastern District of Louisiana.

J. A. E. Pyle, Trustee,
vs. No. 14,240.
Texas Transport & Terminal Company, et als.

The replication of J. A. E. Pyle, trustee, Steele, Miller & Company, to the answer of the Bank de Mulhouse:

This repliant, saving and reserving unto himself all and all manner of advantage of exception to the manifold insufficiencies of said answer, for replication thereunto saith:

That he will aver and prove his said bill to be true, certain and sufficient in the law to be answered unto, and that the said answer of the said defendant is uncertain, untrue and insufficient to be replied unto by this repliant; without this, that any other matter or thing whatsoever in the said answer con-

tained, material or effectual to be replied unto, confessed and avoided, traversed or denied, is true; all which matters and things this repliant is and will be ready to aver and prove as this Honorable Court shall direct and humbly prays as in and by his said bill he hath already prayed.

(Signed) W. A. PERCY,
DUFOUR & DUFOUR,
Solicitors.

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339 MOTION AND ORDER IN RE TAKING OF TESTIMONY AND AGREEMENT.

Filed May 3, 1911.

United States District Court, Eastern District of Louisiana, New Orleans Division.

J. A. E. Pyle, Trustee,
vs. No. 14240.
Texas Transport and Terminal Company, et als.

On motion of Dufour and Dufour, solicitors for complainant; Denegre and Blair, solicitors for the Bank of Mulhouse, and George H. Terriberry, solicitor for the Texas Transport and Terminal Company, the Compagnie Generale Transatlantique and Philip Landgren, master, and on suggesting to the Court that they have entered into a stipulation in respect to the taking of evidence in the above cause, a copy of which is hereto annexed, and that they desire the same to be made an order of Court, it is accordingly ordered that the evidence in said cause of all witnesses residing within the jurisdiction of this Court and of such non-resident witnesses as may be brought within said jurisdiction for that purpose shall be taken orally before Frank H. Mortimer, hereby appointed examiner for the purpose, or, by agreement, without an examiner; that the testimony of non-resident witnesses not so appearing before the said examiner or taken by agreement, may be taken by deposition according to the act of Congress; and the testimony of foreign witnesses shall be taken by deposition under commission or letters rogatory.

It is further ordered that the complainant shall take his evidence in support of his bill within fifty-six days from May 3rd, 1911; that defendants shall take their evidence in defense within one hundred and thirty days thereafter, and that complainant shall take his evidence in reply within fifteen days after the expiration of the time for the taking of defendants' testimony, and that no further evidence shall be taken in any of the said causes unless by agreement of the parties or by leave of Court first obtained; but any of the above periods may be extended by agreement of the parties or by
340 this Court on motion for cause shown.

It is further ordered that any evidence, oral or documentary, in any one of said causes may be offered and used in evidence in any of said causes to the same effect as if taken in the cause in which it is so offered and used in evidence. The evidence on either side is not to be considered closed until the return of outstanding commissions to take testimony.

May 3/11.

(Signed) RUFUS E. FOSTER, Judge.

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341 PETITION FOR WRIT OF HABEAS CORPUS AD TESTIFICANDUM.

Filed June 8, 1911.

United States District Court, Eastern District of Louisiana, New Orleans Division.

J. A. E. Pyle, Trustee,
vs.
Texas Transport & Terminal Company, et als.

No. 14240, 14241, 14242, 14243.

Petition for Writ of Habeas Corpus Ad Testificandum.

To the Honorable the District Court of the United States for the Eastern District of Louisiana:

The petition of J. A. E. Pyle, trustee in bankruptcy of Steele, Miller & Company, respectfully shows to this Honorable Court:

That one C. H. G. Linde is confined in the United States Penitentiary at Atlanta, Georgia, and is in the custody of William H. Moyer, warden at said place, under the authority of the United States and in accordance with the laws thereof, having been convicted by the Honorable the United States District Court for the Northern District of Mississippi of an offense against the laws of the United States and sentenced to imprisonment in said penitentiary for two years from April, 1911, by virtue of which the said warden now holds the said C. H. G. Linde.

Your petitioner avers that the said C. H. G. Linde is a material witness in the above entitled causes on behalf of the plaintiff, and that the taking of testimony in the said cases is set for the 13th day of June, 1911, before Frank H. Mortimer, commissioner.

Wherefore, your petitioner prays that this Honorable Court do forthwith order the writ of habeas corpus ad testificandum to issue from this Court to the said William H.
342 Moyer, warden as aforesaid, requiring him to produce the body of said C. H. G. Linde before this Court on said 13th day of June, 1911, to testify on behalf of plaintiff in the above entitled causes, as in duly [duty] your petitioner will ever pray.

(Sig.) DUFOUR & DUFOUR,
W. A. PERCY,
Solicitors.

343 United States of America,
Eastern District of Louisiana.

William C. Dufour, being duly sworn, deposes and says: That he is a member of the firm of Dufour & Dufour, counsel for J. A. E. Pyle, trustee in bankruptcy of Steele, Miller & Company.

That he has read the foregoing petition; that the allegations thereof are true and correct; that C. H. G. Linde, is a material witness in these cases, and that it is necessary that his testimony be taken.

(Sig.) WM. C. DUFOUR.

Sworn to and subscribed before me this 7th day of June, 1911.

(Sig.) CHAS. I. DENECHAUD,
[Seal] Notary Public.

ORDER.

Let a writ of habeas corpus as testificandum issue, directed to the warden of the Federal Penitentiary at Atlanta, Georgia, directing him to produce the body of C. H. G. Linde, now in his custody, before this Court on the 13th day of June, 1911, to testify before Frank H. Mortimer, commissioner, on behalf of plaintiff in the above entitled causes.

(Signed) RUFUS E. FOSTER, Judge.

June 8/11.

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344 WRIT OF HABEAS CORPUS AD TESTIFICANDUM.

Issued June 8th, 1911.

United States of America.

District Court of the United States, Eastern District of Louisiana.

J. A. E. Pyle, Trustee,
vs.
Texas Transport & Terminal Company, et als.

Nos. 14,240, 14,241, 14,242, 14,243.

The President of the United States,

To the Warden of the United States Penitentiary at Atlanta, Georgia, Greeting:

You are hereby commanded to have the body of C. H. G. Linde, detained in the said penitentiary under your custody as it is said under safe and secure conduct, before the Judge of our District Court within and for the district aforesaid, on the thirteenth day of June, 1911, by ten o'clock in the forenoon of the said day, there to testify the truth, according to his knowledge, in a certain cause now pending in said Court, and then and there to be tried between J. A. E. Pyle, trustee in bankruptcy of Steele, Miller & Company, and Texas Trans-

port & Terminal Company, et als. And, immediately after the said C. H. G. Linde shall then and there have given his testimony before our said Judge, that you return him, the said C. H. G. Linde, to the said United States Penitentiary at Atlanta, Georgia, under safe and secure conduct, and have you then and there this writ.

Witness the Honorable Rufus E. Foster, Judge of the said Court, and the sale thereof, at the City of New Orleans, La., this eighth day of June, A. D. 1911.

(Signed) FRANK H. MORTIMER,
[Seal] Clerk.

345 [Indorsed:] 14240, 14241, 14242, 14243. U. S. District Court, Eastern District of Louisiana. J. A. E. Pyle, Trustee, vs. Texas Transport & Terminal Co., et als. Writ of Habeas Corpus Ad Testificandum.

MARSHAL'S RETURN ON WRIT OF HABEAS CORPUS AD TESTIFICANDUM.

Filed June 15th, 1911.

Received this writ on the 9th day of June, A. D. 1911, and in pursuance thereto I brought the body of the within named C. H. G. Linde from the United States Penitentiary at Atlanta, Ga., and produced said Linde before the Judge of the U. S. District Court for the Eastern District of Louisiana, on June 13, 1911.

(Signed) W. H. MOYER, Warden.
By J. L. TUCKER, Capt.

346 ORDER TO WARDEN IN RE C. H. G. LINDE.

Filed June 13th, 1911.

United States District Court, Eastern District of Louisiana.

J. A. E. Pyle, Trustee, etc.,
vs.
Texas Transport & Terminal Co.

No. 14240-14241-14242-14243.

On motion of Dufour & Dufour, attorneys for the complainant herein, and on suggesting to the Court that in obedience to a writ of habeas corpus ad testificandum, the warden of the Federal Penitentiary at Atlanta, Ga., through Capt. J. L. Tucker, has produced in this Court C. H. G. Linde. and on further suggesting that the presence of said Linde will be necessary for a period of some days, and on further suggesting that the proper order should be given for the custody of said Linde during his presence within the jurisdiction of this Court, it is ordered that Mat Long, Esq., Sheriff for the Parish of Orleans, receive for safe keeping the said C. H. G. Linde at such time and under such conditions as may be prescribed by the said Capt. J. L. Tucker, and deliver the said Linde to the said Capt. J. L. Tucker at such time as he may demand.

It is further ordered that pending the further orders of the Court the said Linde be retained within the jurisdiction of the Court.

(Signed) RUFUS F. FOSTER, Judge.

June 13/11.

347 ANSWER OF TEXAS TRANSPORT & TERMINAL COMPANY AND COMPAGNIE GENERALE TRANSATLANTIQUE AND CLAIM FOR DAMAGES.

Filed June 15, 1911.

United States District Court, Eastern District of Louisiana.

J. A. E. Pyle, Trustee,
vs. No. 14,240. In Equity.
Texas Transport & Terminal Company, et als.

The Joint and Several Answers of Texas Transport and Terminal Company and of Compagnie Generale Transatlantique.

Now come Texas Transport & Terminal Company and Compagnie Generale Transatlantique, made defendants herein, and these defendants now and at all times saving to themselves any and all manner of benefit or advantage of exception or otherwise that can or may be had or taken to the many errors, uncertainties and imperfections in the said bill contained, for answer thereto, or to so much thereof as these defendants are advised it is material or necessary for them to make answer to, answering say:

1. They admit that the Compagnie Generale Transatlantique is a corporation created under the laws of the Republic of France, with its domicile in the City of Paris, France, and that Texas Transport & Terminal Company is a corporation organized under the laws of the State of New Jersey; that Compagnie Generale Transatlantique is a common carrier by sea and operates a line of steamers between New Orleans, in Louisiana, and Bordeaux and Havre, in France.

2. They say that, for want of sufficient information, they can neither admit nor deny the allegations contained in the second, third, fourth, fifth and sixth paragraphs of the complaint, relative to the domicile, the business, and the various transactions of Steele, Miller & Company.

3. They say that they believe that the allegations of the seventh paragraph of the complaint are substantially true.

348 4. For want of sufficient information, they can neither deny nor admit the allegations in the eighth paragraph of the complaint relative to the relations and transactions between Steele, Miller & Company and Scheuch & Company or between Steele, Miller & Company and the Bank of Mulhouse.

5. Answering the ninth paragraph of the complaint, they say that it is true that on the 7th day of May, 1910, there was on board the steamship "Texas," which said steamer belongs to defendant, Compagnie Generale Transatlantique, 2494 bales of cotton shipped by Steele, Miller & Company to Havre, shipper's order, notify Scheuch & Company, Havre; that, in the case of J. A. E. Pyle, Receiver, vs. Philip Landgren, master, steamship Texas, et als., No. 14,219 of the docket of the United States District Court for the Eastern District of Louisiana, these defendants were enjoined pendente lite from taking said cotton out of the jurisdiction of this Court. These defendants admit that they caused said cotton, at the expense of said Pyle, receiver, to be discharged from said steamer so that the steamer could proceed on her voyage as she was prepared, ready, and going to do when restrained on May 7, 1910, and enjoined on May 9, 1910; they admit that they caused said cotton to be stored in the Kentucky Warehouse, at New Orleans, and they show that they caused said cotton to be insured for the benefit of whom it might concern while the said cotton was so stored.

6. They admit the truth of the allegations contained in the tenth paragraph of the complaint, relative to the refusal of these defendants to deliver said cotton to any person other than the holder of the bills of lading covering same.

7. The defendant, the Compagnie Generale Transatlantique, is solely and only a common carrier by sea; it has no relation with said cotton except as a common carrier; that it has, as in duty bound and as by law required, obeyed all of the orders of this Honorable Court, in the various
349 cases of Pyle, Receiver, vs. Philip Landgren, Master,

Steamship Texas, et als., No. 14,219 of the docket of this Court, and in the cases of Pyle, Trustee, vs. Texas Transport & Terminal Company, et als., numbered, respectively, 14,240 14,241, 14,242, 14,243 and 14,277 of the docket of this Court; defendants show that the said injunctions remained in force and were obeyed by these defendants until they were, on the 15th day of February, 1911, notified by Frank H. Mortimer, clerk of Court, that all injunctive orders in respect of said cotton were released and dissolved; that, thereupon, the Compagnie Generale Transatlantique carried said cotton forward by its first steamer, the Guatemala, and delivered the said cotton to the holders of its bills of lading in Havre, France, and took its said bills of lading on delivering said cotton, its bill of lading being thus accomplished and the responsibility and liability of the Compagnie Generale Transatlantique, and of its agent, the Texas Transport & Terminal Company, in respect of said cotton, being thereupon terminated.

Now, the defendant, the Compagnie Generale Transatlantique, shows that, in obeying the various orders of this Honorable Court, it sustained damages and incurred expenses, which, in equity, law, and justice, the Court should require the complainant herein to pay to said defendant. That the damages so sustained by said Compagnie Generale Transatlantique as a result of the aforesaid injunctive orders of this Court are as follows:

(1) In dead freight on said 2494 bales of cotton, which cotton was delivered to, and placed on board of, the steamship Texas, and which said cotton was subsequently discharged, the said steamer proceedings on her voyage without said cargo and without any substitute therefor, the amount of said dead freight being $3310.53.

(2) In the cost of insurance of said 2494 bales of cotton while in the Kentucky Warehouse from May 10,
350 1910, to March 9, 1911, paid out in cash by said Compagnie Generale Transatlantique, which amounted to the sum of $2621.54.

(3) In cost of drayage of said cotton from steamer Texas to Kentucky Warehouse, the storage in said warehouse from May 12, 1910, to March 9, 1911, the drayage to the steamer

Guatemala, and re-marking the said cotton, for all of which the said Compagnie Generale Transatlantique owes the said Kentucky Press and is bound to pay, amounting to the sum of $2682.55.

(4) In the cost of detention of the steamer Texas at New Orleans for nine days while her cargo was being discharged and reloaded so as to comply with the injunction of May 9, 1910, the sum of $1667.20.

(5) The difference between the current rate of freight, that is, thirty-seven (37) cents per one hundred pounds, applying when said cotton was carried forward to destination by the steamship Guatemala, on March 16, 1911, and the bill of lading rate, that is, twenty-six (26) cents per hundred pounds, on 2094 bales weighing 1,055,761, and twenty-eight (28) cents per hundred pounds on 400 bales weighing 201,943 pounds, at which rate this defendant was, under its said contracts, obligated to carry said cotton, the said difference amounting, in the aggregate on the 2494 bales, to the sum of $1343.08.

(6) The Compagnie Generale Transatlantique has had to employ an attorney-at-law for counsel throughout these matters and, also, to recover the damages aforesaid, and it prays the Court to allow it a reasonable sum as counsel fees.

The defendant, the Compagnie Generale Transatlantique, shows that, in equity, justice, and law, it should have a decree in its favor and against the complainant in full of all of said damages, with legal interest from the time said damages were sustained until paid.

Wherefore, these defendants pray that the said
351 bill of complaint be dismissed as against these defendants and for costs; the defendant, the Compagnie Generale Transatlantique, prays that there may be a decree in its favor and against the complainant for all the damages sustained, with legal interest thereon from the time said damages were sustained until paid, as fully set out in this answer; these defendants further pray for all such other and general relief as they may, in equity and law, be entitled to receive and the Court competent to grant.

(Signed) GEO. H. TERRIBERRY,
Solicitor for Defendants, Texas Transport & Terminal Company and Compagnie Generale Transatlantique.

352 AMENDED ANSWER OF THE TEXAS TRANSPORT & TERMINAL COMPANY AND COMPAGNIE GENERALE TRANSATLANTIQUE.

Filed August 29, 1911.

In the District Court of the United States for the Eastern District of Louisiana.

J. A. E. Pyle, Trustee,
vs. No. 14,240. In Equity.
Texas Transport & Terminal Company, et al.

And now come Texas Transport & Terminal Company and Compagnie Generale Transatlantique, the defendants in the above cause, and leave of Court being first had, file the following amendment to the answer filed in this cause on the 15th day of June, A. D. 1911, to-wit:

After the conclusion of the seventh article of the answer, add the following allegations:

"The defendant, the Compagnie Generale Transatlantique, further shows that, for the damages aforesaid, it has a lien and privilege on all of the 2494 bales of cotton which were on board its said steamer Texas, but that, as a bond was furnished by the defendant herein, the Bank of Mulhouse, equal to the value of the cotton covered by bills of lading held by it, the said bond to stand in the place and stead of the said cotton, and, as it was ordered by the Court, at the suggestion of all parties hereto, that all claims against said cotton should be referred to said bond, the claim of said Compagnie Generale Transatlantique against said cotton and the lien and privilege in its favor on said cotton now holds and applies as against said bond so filed by the defendant herein, the Bank of Mulhouse, said bond standing in the place and stead of said cotton."
And amend the prayer of said answer so as to read as follows:

Wherefore, these defendants pray that the said bill of complaint be dismissed as against them, and for costs;
353 the defendant, the Compagnie Generale Transatlan-

tique, prays that there may be a decree in its favor and against the complainant for all the damages sustained, with legal interest thereon from the time said damages were sustained until paid, as fully set out in this answer; and, in the alternative, the defendant, the Compagnie Generale Transatlantique, prays that if this Court rejects its claim for damages, attorney's fees and interest against the complainant herein, then that the Court will grant and award such claim for all such damages, attorney's fees and interest against said cotton, or its proceeds, or the bond aforesaid standing in lieu thereof, with full recognition of its lien and privilege on said cotton or its proceeds or the bond which stands in lieu thereof, as this defendant may be entitled to have in the premises and which to the Court shall seem meet and just, and for such other and general relief as to the Court shall seem proper.

(Signed) GEO. H. TERRIBERRY,
Sol. for Texas Transport & Terminal Co. and
Compagnie Generale Transatlantique.

ORDER.

Let the foregoing amended answer be filed.

(Signed) RUFUS E. FOSTER,
United States Judge.

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354 HEARING IN PART AND CONTINUANCE.

Extract From the Minutes, November Term, 1911.

New Orleans, Monday, November 20th, 1911.

Court met.

Present: Hon. Rufus E. Foster, Judge.

J. A. E. Pyle, Trustee,
vs. No. 14,240.
Texas Transport and Terminal Company, et als.

This cause came on to be heard this day upon the pleadings and proofs as specified in the notes of evidence offered in behalf of the respective parties.

Present: Messrs. Dufour & Dufour and W. A. Percy, Solicitors for Complainant.

Present: George H. Terriberry, Esq., Solicitor for Texas Transport & Terminal Co. and Compagnie Generale Transatlantique, Defendants.

Present: Messrs. Denegre & Blair, Solicitors for the Bank of Mulhouse, Defendant.

And was heard in part, and continued until Tuesday, November 21st, 1911, at ten o'clock A. M., for further argument.

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355 NOTE OF EVIDENCE OF COMPLAINANT.

Filed November 20th, 1911.

United States District Court, Eastern District of Louisiana.

J. A. E. Pyle, Trustee,
vs. No. 14,240.
Texas Transport & Terminal Company, et als.

Solicitors for complainant offer, produce, read and file in evidence in this case the following:

Stipulation of counsel as to the use in causes Nos. 14,240, 14,241, 14,242, 14,243 and 14,277 of the evidence taken and filed in any one of said causes.

Stipulation of counsel as to testimony of W. E. Kennedy.

The testimony of Edward S. Elliott.

The testimony of W. H. Hendren, together with the exhibits attached thereto, the first of said exhibits being attached to the record herein filed and marked "Complainant-26"; the second being Exhibit "No. 11," to-wit, cables offered in connection with the testimony of W. H. Hendren.

The testimony of Bernard Dessommes, together with exhibit, to-wit, copies of the Havre Bulletin of date April 27, 1910, and April 28, 1910, the said exhibit being attached to an affidavit of Wm. C. Dufour filed and used in connection with the proceedings for a preliminary injunction, and now made Exhibit "15."

The testimony of Henry E. Bory, together with the same exhibit offered in connection with the testimony of Bernard Dessommes.

The testimony of John H. Fulton, A. Breton, Jeff D. Hardin, Jr., together with the statement entitled "Loading Record," furnished by the said Jeff D. Hardin, Jr., which said exhibit is marked Exhibit "No. 10."

The testimony of C. H. G. Linde, together with Exhibit "1," being a letter from Scheuch & Company of date January 20, 1910; Exhibit "2," a letter from Scheuch & Company of date April 26, 1910; Exhibit "3," a letter from
356 Scheuch & Company of date March 22, 1910; Exhibit "4," a statement from Scheuch & Company of date April 2, 1910; Exhibit "5," a letter from Scheuch & Company of date April 6, 1910; Exhibit "6," cablegram to Scheuch & Company of date April 28, 1910; Exhibit "7," statement of drafts drawn by Steele, Miller & Company on Scheuch & Company and claimed by Linde to have been taken up April 29, 1910; Exhibit "8," a statement of Scheuch & Company of date April 29, 1910.

The testimony of Charles Janvier, Thomas Holford, together with extract from the Liverpool Daily Post & Mercury of April 22, 1910, attached to the affidavit of Wm. C. Dufour used in the proceedings on the application for a preliminary injunction, the said injunction, the said exhibit being marked "—."

The testimony of Edward S. Butler.

The testimony of Edward D. Nicholson.

All of said testimony being taken before Frank H. Mortimer, Special Examiner, at his office in the City of New Orleans, on the 7th, 9th, 15th, 16th and 22nd days of June, 1911.

A certified copy of the proceedings in the case of S. B. & E. Cohn, et al., vs. L. C. Steele, et al., No. 157 in Equity of the docket of the United States Circuit Court for the Eastern Division of the Northern District of Mississippi, being Exhibit "No. 14."

Certified copy of the proceedings in the matter of Knoop, Fabarius, et al., vs. Steele, Miller & Company, No. 123 in Bankruptcy in the District Court of the United States for the Eastern Division of the Northern District of Mississippi, particularly the petition for adjudication in involuntary bankruptcy, the certificate of the clerk showing the date of the

filing thereof and the orders of the Court in the premises. The appointment of J. A. E. Pyle as temporary receiver and the bond of J. A. E. Pyle as temporary receiver. The order of reference to John W. Davis, referee in bankruptcy, the adjudication in bankruptcy by the said John W. Davis. The certificate of the said John W. Davis, referee in bankruptcy, showing the election of a trustee, the bond of said trustee,
357 together with the certificate of the clerk of the District Court of the United States for the Northern District of Mississippi, showing that John W. Davis was at the time of the said proceedings the referee of said court in bankruptcy and is now the referee of the said court in bankruptcy; the same being Exhibit "No. 12" and Exhibit "13."

Exhibits 2 to 53, inclusive, attached to the deposition of Adolph Riss, the same being the drafts, through bills of lading, invoices, insurance certificates and custody bills of lading called for during the examination of Mr. Linde.

Exhibit 1 attached to the deposition of Franz Lysell, called for as above.

Exhibits 1 to 34, inclusive, attached to the deposition of Elisee Paul Dubois, called for as above.

Exhibits 9 to 13, inclusive, attached to the deposition of Emile Level, called for as above.

Exhibits 2 to 7, inclusive, attached to the deposition of Jules Castel, called for as above.

Admission concerning testimony of J. A. E. Pyle, trustee.

Stipulation of counsel entitled in all the above causes whereby all exhibits annexed to the foregoing depositions except those included in the above offer have, by agreement, been withdrawn because in the opinion of counsel they were irrelevant, cumulative or duplicates.

358 COMPLAINANT'S EVIDENCE.

STIPULATION AS TO EVIDENCE OFFERED IN BEHALF OF J. A. E. PYLE, TRUSTEE, COMPLAINANT.

Filed November 20, 1911.

United States District Court, Eastern District of Louisiana, New Orleans Division.

J. A. E. Pyle, Trustee,
vs.
Texas Transport and Terminal Company, et als.

Nos. 14240, 14241, 14242, 14243 and 14277.

Stipulation in Respect to Taking of Evidence in the Above Cases.

It is agreed between the undersigned, on behalf of the parties for whom they respectively appear as solicitors of record in the above entitled and numbered causes, that the evidence in said causes of all witnesses residing within the jurisdiction of the said Court and of such non-resident witnesses as may be brought within the said jurisdicton for that purpose shall be taken orally before an examiner to be appointed by the said Court, or, by agreement, without an examiner; that the testimony of non-resident witnesses not so appearing before the examiner or not so taken by consent may be taken by deposition according to the act of Congress, the testimony of foreign witnesses to be taken by deposition under commission or letters rogatory.

It is further likewise agreed that the complainant shall take his evidence in support of his bill within fifty-six days from the date hereof; that defendants shall take their evidence in defense within one hundred and thirty days thereafter; and that complainant shall take his evidence in reply within fifteen days thereafter; and that no further evidence shall be taken in any of said causes unless by agreement of the parties or by leave of Court first obtained. Any of the above periods

may be extended by agreement of the parties, or by the Court on motion for cause shown.

It is further likewise agreed that any evidence, oral or documentary, in any one of said causes may be offered and used in evidence in any of said causes to the same effect as
359 if taken in said cause.

The evidence on either side not to be considered closed until the return of outstanding commissions to take testimony.

N. O. La., May 3, 1911.

(Signed) DENEGRE & BLAIR,
Solrs. for Named Banks & Bankers.
(Signed) GEO. H. TERRIBERRY,
Sol. for Defendants Represented by Him.
(Signed) DUFOUR & DUFOUR,
Solicitors for Pyle, Trustee.

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360 STIPULATION BETWEEN COUNSEL IN THE TESTIMONY OF W. E. KENNEDY, AGENT OF THE MOBILE & OHIO RAILROAD COMPANY, MARKED EXHIBIT 9.

Filed November 20, 1911.

United States District Court, Eastern District of Louisiana, New Orleans Division.

J. A. E. Pyle, Trustee, etc.,
vs. No. 14243.
Texas Transport and Terminal Company, et als.

Stipulation.

It is admitted that W. E. Kennedy, agent of the Mobile & Ohio Railroad Company, at Columbus, Mississippi, if examined as a witness, would testify that the four bills of lading attached to the four drafts drawn by Steele, Miller and Company on the Societe Generale, which drafts and bills of lading are annexed to the deposition of Elisee Paul Dubois taken in this

cause, are not genuine but are forgeries and do not represent any cotton delivered to the carrier at the time.

November 10th, 1911.

(Signed) DENEGRE & BLAIR,
Solicitors for Havre Banks, Defendants & Paul Chardin.

(Signed) DUFOUR & DUFOUR,
Solicitors for Complainant.

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361 TESTIMONY OF COMPLAINANT.

Filed November 20, 1911.

United States District Court, Eastern District of Louisiana.

J. A. E. Pyle, Trustee of Steele, Miller & Co.,
vs.
Texas Transport & Terminal Company.

Nos. 14,240, 14,241, 14,242, 14,243, and 14,277.

Testimony taken in the above numbered and entitled cause before Frank H. Mortimer, Esq., Special Examiner herein, at his office in the Custom House Building, Louisiana, on the 7th, 9th, 15th, 16, and 22nd days of June, 1911.

Appearances:

MR. William C. Dufour, of Counsel for Complainant.

Mr. J. P. Blair, of Counsel for the Defendant Banks, Namely, Paul Chardin, Societe Generale, Credit Havrais, Banque de Mullhouse and the Comptoir d'Escompte de Mullhouse.

362 EDWARD S. ELLIOTT, witness sworn and examined on behalf of complainant, testified as follows:

Direct Examination.

Q. What is your name?

A. Edward S. Elliott.

Q. Where do you reside?

A Memphis, Tennessee.

Q. What is your business?

A. I am a public auditor and accountant.

Q. Where do you practice your business, in Memphis?

A. Memphis, Tennessee, office 308-312 Trust Building.

Q. How long have you been a public accountant?

A. Since 1888.

Q. Have you had anything to do with the affairs of Steele, Miller & Company in the capacity as public accountant, I mean since Steele, Miller & Company have been in the hands of the bankruptcy court?

A. Yes, sir; I was employed by J. A. E. Pyle, trustee in bankruptcy, first receiver in bankruptcy and then trustee in bankruptcy, and went over the affairs of Steele, Miller & Company.

Q. Have you made any examination and audit of the books and affairs of Steele, Miller & Company?

A. I have.

Q. Can you state the assets and liabilities of Steele, Miller & Company as appear from the books and the result of the investigation made by you?

A. I made a report to Mr. J. E. Pyle, trustee in bankruptcy, and the actual assets amounted to about $75,000 and the liabilities amount to about $2,800,000.

363 Q. Did you go into the books of Steele, Miller & Company at any time previous to the bankruptcy to establish the financial condition of that company, and if so, state when and for what period?

A. The books of the company prior to September, 1909, were missing.

Q. From September, 1909?

A. From September 1st, 1909, we went back through insurance records and other means outside of the regular books, which showed there was a large deficit in the amount of actual cotton shipped—

Q. No, but I am talking about—

A. —and drawn against. They drew against something like 20,000 bales of cotton in September, 1909, about the first of September, 1909, over the amount that they had gotten to fill.

Q. And had acquired the money?

A. Yes, sir.

Q. And the same was a liability against them?

A. Yes, sir.

Q. Were they solvent on the first of September, 1909?

A. I do not believe they were.

Q. Were they solvent at any time since?

A. No, sir.

Q. They owed shippers 20,000 bales of cotton they had secured the money for?

A. They had secured the money on 20,000 bales of cotton that shipments had not been made, neither did they have the cotton to make good the shipments.

Q. Did they have the cash on hand?

A. No, sir.

Q. When you say actual assets, Mr. Elliott, what do you mean?

A. I mean the cash and cotton that they actually got from the banks that came into the hands of the trustee.

Q. You are not considering any suits, are you?

364 A. No, sir, which are contingent assets; this Texas cotton and other cotton they might get through law.

Q. The word actual assets means actual tangible assets which they had in their possession?

A. Yes, sir.

Q. You are familiar with the cases of Pyle, receiver, against the Credit Havrais, Societe Generale, Paul Chardin, and Banque de Mulhouse, and Comptoir d'Escompte de Mulhouse?

A. Yes, sir; that represents the people who are claiming the cotton of the steamer Texas that was attached by Steele, Miller & Company.

Q. Have you examined the records of the railroad companies at points from which supposed through bills of lading were supposed to issue and learned as to whether or not any cotton of the marks referred to in the various petition was shipped?

A. I took the railroad companies records as a basis of my investigation and in some places I was able to investigate the records themselves, but I was stopped by an order of the Interstate Commerce Commission prohibiting me from taking all the offices.

Q. You were stopped by the commission?

A. Yes, sir; I have a transcript by the railroad companies of the supposed shipments.

Q. Are you familiar with the amounts now claimed in suit both in these and other cases?

A. Amounts that have been brought by the trustee?

Q. Amounts of the suits brought by the trustee?

A. Yes, sir.

Q. What are those amounts?

365 A. About $280,000 against the Steamer Texas, about three hundred and some odd thousand dollars against Stephen N. Ellis and Company, and then some suits against certain banks for amount of money that was on hand at the time.

Q. Amounting to what?

A. The suits pending so far amount to about $400,000 in total.

Q. If the entire amount is recovered in suits, added to the amount of tangible assets and assets on hand, will Steele, Miller & Company be able to discharge their obligations to their creditors as appears from the books?

A. No, sir; I think they will pay about 20 cents on the dollar if they recover everything they brought suit against.

Cross-Examination.

By Mr. Blair:

Q. Please state over again the facts upon which you base your statement that in September, 1909, Steele, Miller & Company were insolvent?

A. On the ground that they had a large amount of obligation for cotton to be shipped that they had drawn against and for which no cotton had been shipped, and they afterwards had to draw other bills of lading and make drafts against other parties to make good this deficit.

Q. And are those all the facts on which you base the conclusion they were insolvent at that time?

A. I had no other basis to base it on inasmuch as no books are in the possession of the trustee.

Q. So it was simply based on that, that they had outstanding obligations to ship 20,000 bales of cotton for which they had been paid but which they had not shipped?

A. The insurance companies records show they
366 had issued certificates on this cotton and the records of Van Gerpen, exchange foreign broker, show they had drawn against this cotton, or supposed cotton.

Q. How do you know that cotton had not been shipped?

A. For the reason it was shipped in 1909 and 1910 during this last year which I investigated.

Q. You say that in September, 1909, there were these 20,000 bales of cotton obligations out?

A. Yes, sir.

Q. How do you know they had not been shipped?

A. Because it came in the 1909 and 1910 business. In other words, the marks that were drawn for, the [they] had issued or bought cotton to make good these different shipments.

Q. Do the books or the records you examined show what they did with the money the [they] realized on the drafts drawn against these 20,000 bales of cotton?

A. What they did with it?

Q. No, I asked you whether the books show?

A. There were no books prior to 1909 to show what was done with it.

Q. Then, you don't know what they had done with the money the [they] realized on these drafts?

A. Prior to 1909, no, sir, I do not; it may be over in France.

Q. What do you mean by it might be over in France?

A. I say the consignments of this cotton might be over there and not accounted for during this year; it might be consigned and not drawn for.

Q. If that were the case then they would not be insolvent in September, 1909?

A. If they got any money over in France to make that good, no.

Q. Then their insolvency in 1909 is based on the assumption they did not have anything left of what they received on the drafts against this 20,000 bales of cotton?

A. They evidently did not have anything over
367 here, because they drew drafts on other parties to make good the purchase of this cotton, to ship this cotton out.

Q. Is not their insolvency then but an assumption on your part?

A. It is based entirely on the records that I found, they had not shipped this cotton, it was shipped afterwards. I had no books prior to that.

Q. And it is simply based on the fact they had committed a fraud to the extent of 20,000 bales?

A. I based that on—

Q. And on that you assume they were insolvent, is that right?

A. Yes, sir.

Q. You stated that at a later date, I believe at the date of the bankruptcy, there were outstanding $2,800,000 liabilities?

A. Yes, sir; about thirty-four and some odd thousand bales.

Q. Those liabilities represented drafts drawn against fraudulent bills of lading largely?

A. Yes, sir.

Q. This $2,800,000 includes the liability on the fraudulent bills of lading?

A. Yes, sir.

Q. And drafts drawn against the same without giving credit, for example, in this case of the Texas cotton for the cotton that had been sent on?

A. Yes, sir.

Redirect Examination.

By Mr. Dufour:

Q. How many bales of cotton were short when Steele, Miller and Company went into bankruptcy?

A. 34,500, I think it is. My report gives the true amount. I have the report here if you would like to see it.

Q. I want the exact amount. State the number of bales that Steele, Miller & Company were short on the

368 day they went into bankruptcy?

A. 34,520 bales.

Q. Against which drafts had been drawn amounting to—

A. $2,538,191.40.

Q. Have you had occasion to study the accounts of Steele, Miller and Company, Scheuch & Company and the various de-

fendants here in regard to the various bales of cotton drawn against under bills of lading and the number of bales of cotton actually delivered?

A. Yes, sir.

Q. Now assuming that the 2494 bales of cotton which we intercepted, for the Steamer Texas, had been delivered through Scheuch & Company or to Scheuch & Company and the various defendants here, would they have received practically their entire commitment from Steele, Miller & Company during the period of your investigation?

A. If they had gotten this cotton?

Q. Yes?

A. Counting the money they had gotten they would.

By Mr. Blair:

Q. Who had gotten?

A. Scheuch & Company.

By Mr. Dufour:

Q. Explain that answer?

Mr. Blair:

Counsel objects to any evidence of the witness as to what the records will show in regard to money payments to Scheuch & Company or to others, on the ground it is irrelevant under the pleadings, and second, on the ground it is not competent to prove by this witness orally what the records of Steele, Miller & Company show.

369 Q. State the number of bales of cotton?

Mr. Blair:

And further that the records of Steele, Miller & Company are not binding on the defendants represented by this counsel, namely, the various defendant banks.

A. For the steamship Texas was 2494 bales of cotton which amounted to $183,409.40 in dollars and cents, and the amount of cotton consigned to them for which no drafts were drawn,—

Q. That was consigned to whom?

A. Scheuch & Company, was 91,136, and $113,353.65 was

cash that was sent over by cable, transferred by cable, making $387,899.05 which Scheuch & Company would have gotten. Now, if you credit $150,834.96, as per exhibit A, it will leave a debit balance of $237.054.05; then if you take off the Texas cotton $183,409.40 there will appear a debit balance of $43,000 of Scheuch & Company.

Q. Do you mean to say that if all of the transactions between Scheuch & Company and the various parties beginning from September 1st, 1909, up to and including the bankruptcy, including all of the drafts, and the cotton shipped against it, that if the French banks, or if Scheuch & Company or these defendants had received this cotton they would practically have received the entire commitments of the year 1909?

Mr. Blair:

Objected to for the reasons already stated, and because the question is confusing in that it makes no distinction between Scheuch & Company and the individual defendant banks, the witness's answer having reference to Scheuch & Company only.

A. Yes, sir.

Q. Will you please produce a statement, prepare
370 and produce a statement showing the drafts drawn on the following banks, Societe Generale, Credit Havrais, Banque de Mulhouse, Comptoir d'Escompte de Mulhouse and Paul Chardin, beginning September 1st, 1909, up to and including the ending of business by Steele, Miller & Company showing the cotton that was delivered against said drafts and the amount of cotton that would have been due said banks if the Texas cotton had not been intercepted?

A. I will prepare this statement.

Q. You will prepare it?

A. Yes, sir.

By Mr. Blair:

Q. I do not know whether you stated that the banks, if they received the cotton in dispute in this case, would receive all the cotton they were entitled to and would not be out on account of any cotton. Did you answer that question?

A. He asked me, as I understood his question, whether the cotton that was shipped to Scheuch who represeented the

banks. The money that was sent over there was, I suppose, applied by Scheuch to the credit of the banks.

Q. What do you mean by saying that Scheuch represented the banks?

A. I suppose he represented the banks in the transaction of buying and selling the cotton.

Q. You say you suppose. Do you know anything about it?

A. Nothing other than the fact that the shipments were made to Scheuch & Company and the reimbursements were made against the different banks.

Q. That is all you know about it?

A. Yes, sir.

371 W. H. HENDREN, witness sworn and examined on behalf of complainant, testified as follows:

Direct Examination.

By Mr. Dufour:

Q. You are a resident of this city, Mr. Hendren?

A. Yes, sir.

Q. And resident manager of the Texas Transport and Terminal Co.?

A. Local manager.

Q. I say resident manager?

A. Yes, sir.

Q. And the Texas Transport and Terminal Company is the agent of the Compagnie Generale Transatlantique?

A. Yes, sir.

Q. Was the steamship Texas loaded under your charge and agency at the time that certain cotton was intercepted under the process of the United States Court in the case of Pyle, Receiver, vs. Steele, Miller & Company?

A. Yes, sir.

Q. Are you acquainted with the domicile of the Compagnie Generale Atlantique, where it is?

A. Yes, sir; it is in Paris.

Q. Is there an office in Havre?

A. Yes, sir.

Q. Who is the agent at Havre?

A. Ducret was at that time, at the time this cotton was intercepted from the Texas.

Q. Mr. Hendren, I hand you a statement purporting to show the issuance of custody bills of lading by the steamship Texas, giving the dates and marks and numbers of bales, and I will ask you is [if] that is a correct statement
372 of the bills of lading issued by you for account of the steamship Texas, those marks and those dates?

(Counsel hands witness statement referred to and witness examines same.)

A. Yes, sir.

Q. Beginning at the entry appearing on that statement, "April 19th R D H O 100 custody ladings for Texas," state where that cotton was delivered to you, where the various marks were delivered to you, whether or not at the wharves at New Orleans and by whom?

A. That was all delivered at New Orleans wharves, 400 bales of it coming from the I. C. Railroad and 1694 bales of it from the New Orleans and Northeastern Railroad.

Q. Which 400 bales came from the I. C. Railroad, give me the marks?

A. 100 R D A R, 100 R U R A, 100 R B T R, 100 Q A T R.

Q. Now, the remaining 1600 bales you say were delivered over the New Orleans and Northeastern?

A. Delivered by the New Orleans and Northeastern.

Q. Now, Mr. Hendren, when you say that 400 bales came over the Illinois Central and 1600 came over the New Orleans and Northeastern, and delivered at the city wharves, will you please explain exactly what you mean by that?

A. Well, the cotton was drayed by these lines to our city front wharves, shipped, presumably, on local bills of lading.

Mr. Blair:

I object to the statement, "presumably."

Q. As a matter of fact, do you know whether or not they were shipped in on local bills of lading?

A. I do not. I know that we had no through bills of lading for this particular cotton.

Q. In the course of your business is it customary
373 for you to keep one of the original bills of lading

issued, a copy of the bill of lading issued by you for the shipment of cotton, in your records?

A. Only port and custody ladings.

Q. I say port and custody bills of lading?

A. Yes, sir.

Q. You do keep one of the original issued, in your records?

A. Yes, sir.

Q. I have asked you through your counsel to prepare for me copies of the bills of lading issued for the cotton which you have described, and I now hand you the documents and ask you if those are true and correct copies of the originals taken from your office and your files. Did you prepare those?

A. I did.

Q. And these are copies of the bills of lading issued for that cotton which you have identified from the statement which was submitted to you?

A. They are.

Offer:

Mr. Dufour:

In connection with the testimony of the witness counsel for complainant offers, introduces and files in evidence 25 bills of lading marked respectively complainant-1 to complainant-25 inclusive.

Q. Now, to whom did you deliver those bills of lading?

A. They were delivered to the agents or brokers of Steele, Miller and Company.

Q. Who were they?

A. Steele, Hardin and Dillon. Now, I am not positive whether it was Steele, Hardin and Dillon or—

Q. Do you know whether or not they were delivered to Mr. Hardin?

A. They were delivered to Mr. Hardin.

Q. Through whom did you receive the cotton,
374 through Mr. Hardin?

A. Yes, sir.

Q. Who handled the shipment of the cotton?

A. He did.

Q. As the agent of Steele, Miller & Company?

A. Yes, sir.

Q. Now, do your records show that you ever had any through bills of lading for this particular cotton?

A. They do not.

Q. I ask you now, to take this memorandum which I submitted to you and look at the first four items beginning April 15th, marks Q M T A, number of bales 100, and state where this cotton was received. State, first, whether you issued bills of lading on the dates set forth and in the manner set forth and from whom this cotton was received?

A. This cotton was delivered at Chalmette and was on through bills of lading, we giving custody bills of lading in exchange for the through bills of lading. Delivery was made by order of Mr. Billups, foreign freight agent of the New Orleans and Northeastern and Mobile and Ohio.

Q. Did you issue the custody bills of lading set forth there?

A. We did.

Q. To whom did you deliver those custody bills of lading?

A. To Mr. Hardin.

Q. What did you receive?

A. We received the original through bills of lading.

Q. In other words the original through bills of lading were changed for the custody bills of lading and the original through bills of lading were surrendered to you?

A. That is correct.

Q. And to whom did you surrender the original bills of lading?

A. To Mr. Billups.

Q. Is he the agent—

375 A. He is the recognized agent of the New Orleans and Northeastern and Mobile and Ohio Railroads.

Q. The difference between a port bill of lading—will you explain in a few words the difference between a port bill of lading and a custody bill of lading?

A. A port bill of lading must be a bill of lading issued for a vessel in port; whereas, a custody bill of lading can be issued at any time 21 days before it is necessary to have the cotton on board of the vessel; or in other words, in the issuance of the custody bill of lading under the Liverpool

Cotton Conference Rules we guarantee to have the cotton on board of the vessel within 21 days from the date of the bill of lading.

By Mr. Blair:

Q. They are equally negotiable?

A. Yes, sir.

Q. And the only difference is that in the case of the custody bill of lading the ship may not be in the harbor and ready to load at the time it is issued?

A. It is not necessary for the vessel to be here under a custody bill of lading, whereas it is on a port bill of lading.

By Mr. Dufour:

Q. Then the issuance of a custody bill of lading or a port bill of lading is evidence that the stuff that has been shipped is in the possession of the carrier, of the vessel or its agent?

A. Absolute evidence.

Q. How wide an experience have you had as a ship agent?

A. About fifteen years, I think.

Q. How long have you been the agent of the representative of the Compagnie Generale Transatlantique?

A. I cannot recall exactly but since it opened up
376 here. I do not remember, off hand, just when that was. I suppose six or seven years ago. I have been in New Orleans as representative of the Texas Transport and Terminal Company since July, 1900.

Q. You are thoroughly familiar with the method necessary for handling shipments and the issuance of bills of lading?

A. Yes, sir.

Q. In your experience as a ship agent, have you ever heard of and circumstance or combination or circumstances whereby a party holding a through bill of lading has also been issued a custody or port blil of lading without surrendering the through bill of lading?

Objection.

Mr. Blair:

Objected to as irrelevant and also as incompetent evidence to establish any fact material to the issue in this case.

A. I have not.

Q. I will come back to that question. Would it be possible, without the perpetration of a fraud by the steamship company for me after shipping cotton on a through bill of lading to procure from the steamship company or from your office a custody bill of lading without surrendering the through bill of lading?

Objection.

Mr. Blair:

Objected to on the same grounds and also on the ground it is leading.

A. It would not be possible.

Q. Are you, or are you not, more or less acquainted with the banking methods and the custom of the trade appertaining to the handling of bills of lading, the issuance of same by the carriers?

A. I have got a thorough knowledge of that.

377 Q. Well, now, supposing you were told that a thousand bales of cotton had been shipped from Columbus, Mississippi, via the Mobile and Ohio Railroad, for Havre, France, ex- the French Line, on a through bill of lading, and you were also advised at the same time that custody bills of lading were out for the same cotton, what would that convey to your mind?

Objection.

Mr. Blair:

Objected to as irrelevant and incompetent testimony to any issue in this case.

A. That would convey to my mind that the through bills of lading had been surrendered to the agent issuing the custody bills of lading.

Q. Would it be possible to have had custody bills of lading without the through bills of lading?

Note: It is understood that the same objection, namely, that the evidence is irrelevant and the witness incompetent to

give the testimony sought to be elicited by the question, is made to all questions of this character.

A. It would not.

Q. And have you any rules on that subject, any orders on the subject from the operation of the business, and rule of the French Line on the subject?

A. No. It is the custom of the port. There are no specific instructions from the French Line. But it would be against the law of the State of Louisiana, as I understand it, to issue bills of lading for cotton not actually in your possession.

Q. Would a circumstance of that sort be sufficient to arouse the suspicion of an ordinary prudent man?

378 Objection.

Mr. Blair:

Objected to for the reasons above stated and also because it is grossly leading.

A. It would certainly arouse my suspicion.

Q. It has been alleged as a ground or defense in this case that the French banks, the defendants in this case, held through bills of lading which bills of lading emanated from the Mobile and Ohio Railroad and the Illinois Central Railroad from various points to the port of New Orleans ex-French Line, and that while these bills of lading were in the actual possession of these defendant banks, custody bills of lading were presented, it being claimed that they had been procured by some arrangement with the railroad or steamship company in order that the cotton could be gotten quicker. Now, I ask you, if, in all your experience, as a steamship agent, you have ever heard of any such condition where both the custody bill of lading and the supposed through bill of lading were in the hands of different people during the time of the shipment?

Objection.

Mr. Blair:

Same objection.

Q. And is such a thing possible?

A. I never heard of such a case, and my opinion would be that the banks should have known from—

Mr. Blair:

Objected to.

Mr. Dufour:

Go right on.

A. —the fact that there was two sets of bills of lading out it was proof positive of fraud.

Objection.

Mr. Blair:

Counsel objects to the further statement on the groung [ground] it is a volunteer statement on the witness not called for by the question and volunteered by him over the objection of counsel.

379 Q. To any man acquainted with ordinary business, ordinary commercial methods, and the handling of cotton, what would that transaction suggest at once?

Objection.

Mr. Blair:

Same objection.

A. Fraud.

Q. Why did you require the surrender of the through bills of lading by Mr. Hardin for the 400 bales at Chalmette, before you issued your custody bills?

A. Because it was customary and it gave us a proper protection. We would not have been protected and had we known that through bills of lading were out and had issued custody bills of lading as well. In other words, we would have been cognizant of the fact that two sets of bills of lading were in existence.

Q. Have you ever heard of the carrier issuing, or of the carrier or connecting carrier under a contract for through

carriage issuing two sets or two evidences of title independent of one another to different parties?

A. I have not.

Q. You never heard of it?

A. No, sir.

Cross-Examination.

By Mr. Blair:

Q. How long have you been a steamship agent of the Compagnie Generale in New Orleans?

A. Since they opened here; I do not recall the exact year, but I should say from 6 to 7 or 8 years ago.

Q. And what was your occupation prior to that time?

A. My business has been that of local manager of the Texas Transport and Terminal Company since 1900 in New Orleans, and prior to that I represented the North American Transportation Company in Norfolk, Virginia.

Q. For how many years?

380 A. I think about four or five years.

Q. And before that time?

A. I was 20 years with the Norfolk & Western Railroad Company.

Q. In what capacity?

A. In various capacities. The last position I had was chief clerk to the foreign freight agent.

Q. Have you ever been in the banking business?

A. I never have.

Q. Have you ever been engaged in business outside of the State of Virginia and the State of Louisiana?

A. I never have.

Q. When you issue custody bills of lading for the cotton how many do you issue.

A. Well, it depends on the desires of the shipper. Sometimes they take them out in sets of two and again in three.

Q. Well, in regard to this Texas cotton, how many custody bills of lading copies did you issue?

A. How many of each bill of lading?

Q. Yes?

A. Probably the original and a duplicate.

Q. And you delivered both in this case to Mr. Hardin?

A. Yes, sir; I see that these particular bills of lading state they were issued in original and duplicate.

Q. The duplicate would be signed by you, agent, as well as the original ones would it not?

A. Yes, sir.

Q. The delivery of cotton to you by the railroad would be preceded by some deliver order given to the railroad, by, in this case, Mr. Hardin, would it not?

A. By Mr. Hardin, I imagine, as he represented the shippers.

Note: It is agreed that the bills of lading offered in evidence in connection with the testimony of the wit-
381 ness on the stand, will be compared with the bills of lading annexed to the affidavit already on file or which may hereafter be offered, and in that case if found to be identical in form, only one set of bills of lading will be left on file in the record.

Offer:

Mr. Dufour:

In connection with the testimony of Mr. Hendren counsel for complainant offers in evidence the statement identified by the witness, list of cotton for which bills of lading were issued, marked Complainant-26.

382 COMPLAINANT 26

Memorandum of bills of lading covering 2494 bales cotton shipped by Steele, Miller & Co., and discharged ex S/S Texas.

Date.	Marks.	Number Bales.	Remarks.
April 15th	QMTA	100	Custody ladings were issued
April 15th	QPLH	100	for these 400 bales in the
April 15th	QRTY	100	name of "Louisiana" upon
April 15th	RDFE	100	surrender of through ladings dated Columbus, Miss. and letter from Mr. Billups stating cotton was on hand for delivery to Louisiana.
April 19th	RDHO	100	Custody ladings for Texas
April 19th	RNAM	100	Custody ladings for Texas

April 20th	RNOI	100	Custody ladings for Texas
April 25th	RDTN	100	Custody ladings for Texas
April 25th	RBSA	100	Custody ladings for Texas
April 23rd	RINO	100	Custody ladings for Texas
April 20th	RMBE	100	Custody ladings for Texas
April 20th	RDAK	100	Custody ladings for Texas
April 20th	QAAR	100	Custody ladings for Texas
April 21st	RMUI	100	Custody ladings for Texas
April 21st	RBXK	100	Custody ladings for Texas
April 21st	RDGB	100	Custody ladings for Texas
April 21st	RTHF	100	Custody ladings for Texas
April 22nd	RJKS	100	Custody ladings for Texas
April 23rd	SRUI	100	Custody ladings for Texas
April 25th	RBTR	100	Custody ladings for Texas
April 25th	QATR	100	Custody ladings for Texas
April 25th	RURA	100	Custody ladings for Texas
April 25th	RDAR	100	Custody ladings for Texas
April 25th	RSOU	96	Custody ladings for Texas
April 25th	RTPN	98	Custody ladings for Texas

All of the above cotton for which we issued custody bill in the name of the "Texas" was delivered locally by Mr. Hardin. forwarding agent, representing Steele, Miller & Co.

June 9, 1911.

383 BERNARD DESOMMES, witness sworn and examined on behalf of complainant, testified as follows:

Direct Examination.

By Mr. Dufour:

Q. What is your name?

A. Bernard Desommes.

Q. What business are you engaged in?

A. I am with E. Allgeyer & Company.

Q. How long have you been with that company?

A. Two years last February.

Q. Previous to that time who were you employed with?

A. With S. V. Fornaris & Company, ship agents.

Q. How long have you been connected with the cotton business, directly or indirectly?

A. Two years with E. Allgeyer & Company and then with Fornaris, who always had a ship with cotton, the bulk of what we carried in ships was cotton, and then formerly I worked with Von Meysenberg for about 15 years.

Q. I hand you two papers entitled Bulletin de Correspondence, one of date the 27th of April, 1910, and the other of date the 28th of April, 1910, and I will ask you if you are familiar with that publication and whether the same is generally circulated in the cotton trade as far as you know.

(Counsel hands witness documents referred to and witness examines same.)

A. Yes, sir. I know we received that paper regularly in the office of E. Allgeyer and Company. I am not familiar with it because I don't have to do with statistics and quotations. But I know it is published regularly, daily published, and we receive it regularly in the office.

Q. E. Allgeyer and Company do business prin-
384 cipally with that place?

A. With Havre.

Q. They have been in business here for many years?

A. I don't know. Mr. Allgeyer has been here since the 70's.

Q. You recognize that as being one of the sources of information in the cotton trade of Havre?

A. Yes, sir; certainly.

Q. What is your business with Mr. Allgeyer?

A. I am cashier and general bookkeeper and manager of the office.

Offer:

Mr. Dufour:

In connection with the testimony of the witness, counsel for complainant offers in evidence the documents referred to, to-wit, the Bulletin de Correspondence dated as follows: Macredi 27 Avril, 1910, and the Bulletin de Correspondence, dated as follows: Jeudi 28 Avril, 1910.

Objection.

Mr. Blair:

To which offer counsel objects on the ground that the same is irrelevant to any issue in this case and is incompetent testimony.

Cross-Examination.

By Mr. Blair:

Q. Do you read that paper regularly?

A. No, I don't read it because I have nothing to do with the cotton part. I don't buy the cotton. I just keep the books.

Q. Did you ever see that paper when you were with Fornaris?

A. He did not take it. He did not do any cotton any cotton business when I was with him, only ship agent.

Q. Did you see the paper when you were with Von Meysenberg?

A. No, sir; because he did his business only with Hamburg; he did no business with Havre.

Q. So the only time you saw that paper was
385 when you were with Allgeyer?

A. Yes, sir.

By Mr. Dufour:

Q. And Allgeyer does business principally with Havre?

A. Yes, sir; the main business is in Havre, Cotoniere, is in Havre.

HENRY E. BORY, witness sworn and examined on behalf of complainant, testified as follows:

Direct Examination.

By Mr. Dufour:

Q. What is your name?

A. Henry E. Bory.

Q. Where do you reside?

A. 1303 Third Street in New Orleans.

Q. With whom are you connected in the cotton business?

A. With Paul Bourcier.

Q. What is the character of Mr. Bourcier's business?

A. Wholesale cotton exporter.

Q. With what port is his principal business?

A. With Havre.

Q. How long have you been connected with him?

A. Nine years.

Q. Always in the City of New Orleans?

A. Yes, sir.

Q. Are you a Frenchman?

A. I am a Swiss, but I have been working in Havre at one time, 25 years ago.

Q. Have you been in Havre recently?

A. Not since 13 years.

Q. Now, I hand you two papers headed Bulletin de Correspondence, one of them dated Macredi 27 Avril,
386 1910, and the other dated Jeudi 28 Avril, 1910, and I ask you if you are acquainted with that paper?

A. Oh, yes.

Q. And if so, state the source of your acquaintance?

A. Well, that is the official paper they give at the Cotton Exchange in Havre.

Q. That is the official paper of the Cotton Exchange in Havre?

A. Yes, sir; that is what we go on.

Q. How long have you been acquainted with that paper?

A. 26 years.

Q. And that is supposed to be the official paper of the cotton business of Havre?

A. Yes, sir.

Mr. Dufour:

To make assurance doubly sure, in connection with the testimony of this witness, counsel for complainant offers, produces and files in evidence the documents herein referred to by the witness, which said documents for greater certainty are further referred to as having been annexed to the affidavit of William C. Dufour of date the 25th day of November, 1910, and filed in No. 14,240 of the docket of this Court, subject to the stipulation that all documents filed in any of said causes can be used is [in] each of said causes for such purpose as they may be relevant.

Mr. Blair:

I call upon counsel to state what part of these newspapers which were offered in their entirety is claimed to be relevant to this case?

Mr. Dufour:

Counsel for complainant, answering the question, states that the parts claimed to be relevant are those parts which are marked with a bluew [blue] lead pencil, towit: In the Bulletin de Correspondence of date Macredi 27 Avril, 1910,
387 beginning with words nous avons parle and ending with the words avec l'Europe, and in the second of said documents, to-wit: The one date Jeudi 28 Avril, 1910, beginning with the words Cette semaine, and the remainder of said paragraph.

Objection.

Mr. Blair:

Counsel makes the same objections made heretofore and the additional objection that the offer should be confined to that part of the newspaper which counsel claims bears upon this case and should not include all the articles and words and figures in the newspapers, the same unnecessarily cumbering the record.

Cross-Examination.

By Mr. Blair:

Q. What do you mean by the official document of the Cotton Exchange of Havre?

A. Well, it is exactly like what we have here when the Cotton Exchange gives you notice of the prices of the day, like we have here in the Cotton Exchange.

Q. Is that printed and paid for by the Cotton Exchange of Havre?

A. It is printed by—I don't know if it is printed by the Cotton Exchange, but it is what is regarded by the merchants as being the official questions. I couldn't tell you if it is printed by the Cotton Exchange.

Q. How long since you have been in Havre?

A. Twelve years.

Q. How long did you stay there then?
A. Two weeks only.
Q. Did you learn what you state, on that visit?
A. Oh, no; I knew that long before, because I used to be clerk with the firm of Siegfried and Allgeyer 23 years ago here, he used to receive that paper.
Q. Did you learn it then, 23 years ago?
388 A. Yes, sir; about 24 or 25 years ago.

W. H. HENDREN, re-called for complainant, testified as follows:

Direct Examination.

By Mr. Dufour:
Q. When you were on the stand last, I overlooked asking you some questions. About the time of the failure of Steele, Miller and Company, did you receive anu [any] cables from your superiors?
A. I did.
Q. Have you those cables?
A. I have.
Q Have you the originals received by you?
A. Yes, sir; and my replies.
Q. Are these cables in cipher?
A. Yes, sir.
Q. Which cipher has been in your possession?
A. Yes, sir.
Q. Have you a copy of the first cable you received?
A. Yes, sir.
Q. Will you please produce it?
A. Cable from Ducrot, cable dated April 25, 1910.

Mr. Blair:
Are you going to offer that?

Mr. Dufour.
Yes.

Objection.

Mr. Blair:

Counsel objects to this cable being received in evidence so far as the defendants for whom he appears of record as counsel are concerned, on the groung [ground] that the same is irrelevant to any issue in this case and is res inter alios acta so far as the defendants respresented by this counsel is concerned.

389 A. The cable reads: "Cable if you have received from Steele, Miller, bales of cotton R. L T O. R W T A, R M E N, R K N G, R Q Y A, R G C A, upon what steamer loaded."

Q. From whom is that?
A. That is from the French Line agent at Havre.
Q. And what date?
A. April 25, 1910.
Q. Will you produce a copy of the cablegram?
A. Yes, sir.

Offer:

Mr. Dufour:

In connection with the testimony of the witness I offer, produce and file in evidence the cablegram referred to and read by the witness and ask that a copy be substituted in lieu of the original.

Objection.

Mr. Blair:

Counsel makes the same objection as made heretofore to the reading of the cable by the witness. But if relevant consents to a substitution of a copy for the original.

Q. Did you reply to that cable?
A. Yes, sir.
Q. What date and to whom did you address your cable?
A. April 25th, to Ducrot, Havre.
Q. What is it?

Objection.

Mr. Blair:

Counsel makes the same objection to the answer to the cable as he made to the introduction in evidence of the cable.

A. My cable read R L T O, R M E N, R K N G, Louisianian, R N T A, R Z Y A, R G C A, "Texas."

Offer:

Mr. Dufour:

In connection with the testimony of the witness counsel offers in evidence the cablegram referred in said
390 testimony and ask leave to furnish a copy instead of the original thereof.

Mr. Blair:

Are you going to have several of these cables and answers read?

Mr. Dufour:

Note: It is understood that the same objection heretofore made will be considered as made and repeated to each of the cables and answers thereto in reference to which the witness is about to be interrogated.

Q. What date was that?

A. April 25th.

Q. Did you receive further cablegrams?

A. Yes, sir; but I sent a cable before receiving the next cable from the agent at Havre.

Q. What date was that you sent the cable?

A. April 26th.

Q. To whom did you send that cable?

A. To Ducrot, Havre.

Q. To what effect?

A. That read: "Referring cable Monday do you hold ladings, cable if interior of port."

Offer:

Mr. Dufour:

In connection with the testimony of the witness I offer in

evidence cable referred to with leave to substitute a copy instead of the original thereof.

Q. Did you receive a cable reply to that?

A. I received a reply under date of April 27th which reads: "Bills of lading interior, cable information, if possible ship 600 bales Louisianian."

Q. From whom was that cable?

A. From the agent at Havre.

Q. Named Ducrot?

A. Yes, sir.

391 Q. Did you reply to that?

A. I replied to that under date of April 27th as follows: "Cotton referred to our cable Monday delivered us locally by Shepard Cotton Company and steamer ladings issued, no interior lading cover this cotton, Steele, Miller, have surrendered steamer ladings to Shepard to whom we will issue ladings in axchange [exchange]."

Mr. Blair:

Counsel inquires what is the object of this testimony?

Mr. Dufour:

The object of the testimony is to show that previous to the 25th day of April, 1910, Commercial World was aware of the operations of Steele, Miller and Company and aware of the fact that Steele, Miller and Company had been engaged as were Knight, Yancey and Company in the issuance of forged bills of lading, and the testimony is for the sole purpose of showing notice of said condition previous to that date and is confined strictly to that purpose and not offered for any other purpose.

Offer:

Mr. Dufour:

In connection with the testimony of the witness I offer in evidence cable referred to with leave to substitute a copy instead of the original thereof.

Q. What is the next cable?

A. The next cable received was from Ducrot, Havre, under

date of April 30, reading: "Referring cables exchanged Monday, how many bales shipped Louisiana, cable when balance shipped." To that I replied under date of April 30: "Shepard surrendered our ladings cotton mentioned Monday's cable retaining cotton here."

392 Offer:

Mr. Dufour:

In connection with the testimony of the witness, I offer in evidence cables referred to with leave to substitute copies instead of the originals thereof.

Q. Now, at the time you forwarded that cable inquiring as to whether the parties had inland or port bales, will you kindly state whether the same was sent because of any rumors concerning Steele, Miller and Company?

Objection.

Mr. Blair:

Objected to on the ground of irrelevancy and on the ground that it is incompetent evidence to show any knowledge on the part of the defendants represented by counsel objecting, and it is incompetent evidence to any issue in this case.

A. I do not recall whether at that time, April 25th, when the first cable was received, just what knowledge I had or any impression that was made as to whether there was anything wrong with Steele, Miller and Company.

No cross-examination.

J. H. FULTON, witness sworn and examined on behalf of complainant, testified as follows:

Direct Examination.

By Mr. Dufour:

Q. Where do you reside?

A. In New Orleans, La.

Q. What position do your [you] occupy?

A. President of the Commercial National Bank.

Q. How long have been president of that bank?

A. About 18 months.

Q. What was your former connection with the Commercial National Bank?

A. Vice president.

393 Q. And manager.

A. Yes, sir.

Q. How long were you connected with that bank in that position?

A. I have been manager of it ever since we started ten years.

Q. Previous to that what was your connection with the banking business?

A. I represented the Canadian Bank of Commerce in New Orleans.

Q. Which domicile being where?

A. Toronto, Canada.

Q. How long had you been with that bank?

A. I joined them in 1887.

Q. As the Canadian Bank of Commerce's representative here, did that carry with it the management of the foreign exchange department?

A. Buying foreign exchange.

Q. You are therefore familiar with the business of foreign exchange?

A. Yes, sir.

Q. You have been summoned as a witness to testify as to the custom of the trade in a certain matter which is this: Steele, Miller and Company sold certain drafts to which were attached bills of lading with insurance policies and invoices, the bills of lading being through bills of lading of the respective railroads ex some steamship line at the port of New Orleans. At a subsequent date Steele, Miller and Company produced what purported to be the port bills of lading for the same cotton and these port bills of lading were given to the parties either in exchange for the through bills of lading or both to be held by the party. I want to ask you if that is usual and customary in the trade, and if not, what would such a course suggest to a prudent business man and one acquainted with foreign exchange?

Q. Well, Mr. Dufour, these second bills of lading

394 would not likely come through the hands of a banker in this city. As I am not familiar with the customs

of the other side, I could not say what that would suggest to them.

Q. I am asking you from your own practice and your own experience in business?

A. What is the question?

Q. If I discount at your bank, or through your bank, a draft to which are attached through bills of lading and at a subsequent period I offer you either in exchange or for other purposes, port bills for the same articles, the same marks, what would that suggest to you as a prudent business man and banker?

Objection.

Mr. Blair:

Objected to on the ground that it is irrelevant to any issue in this case; and also that the witness is not competent to testify as to what impressions it would make upon the banks of Havre.

A. If bills of lading were brought to me purporting to be given for the same cotton and they were ocean bills of lading covering cotton that we had already advanced on through bills of lading, it would naturally arouse some suspicion in our minds as to how there could be outstanding two sets of bills of lading for the same cotton. That is all I can gather from the question.

Q. Now, as a matter of fact, would it be possible to conduct your business if two evidences of title were issued by separate and distinct carriages and permitted to be placed out in the business world?

Objection.

Mr. Blair:

Same objection.

A. I should think not.

Q. Your bank does a great deal of business with foreign banks, does it not?

A. Yes, sir.

395 Q. In your whole experience have you ever heard of any such situation by which foreign banks

conducted a business on lines which I have suggested, to-wit, recognizing the right of an ocean carrier to issue separate and distinct negotiable bills of lading when through bills of lading had been issued and were in circulation?

A. No, sir.

Q. I ask you the plain question, would or would not such a state of affairs is [as] presented to you suggest a fraud or gross carelessness?

A. Yes, sir.

Q. And would or would it not be possible to conduct a business upon that basis?

Objection.

Mr. Blair:

Same objection.

A. It certainly would not make the object of exchange a very safe business predicated upon the title to the property.

Q. As a matter of fact could the foreign exchange business be done predicated upon the documents attached if that was either the custom or recognized in the trade?

A. I should say not.

Q. Have you ever heard of it?

A. No, I have not.

Cross-Examination.

By Mr. Blair:

Q. Do you know whether or not foreign banks and merchants prefer port bills of lading to railroad bills of lading?

A. I understand they prefer port bills of lading.

Q. Do you know what rules and practices exist at this port for the exchange of railroad bills of lading for port bills of lading?

A. No, sir; no more than the ordinary exchange of them.

Q. Have you ever heard of goods being delivered
396 where the through bills of lading were lost the party seeking delivery giving a bond of indemnity to insure against the through bills of lading turning up.

A. No, I don't recall any case.

Q. Don't you know that is frequently done?

A. , I can't recall any case, but I have no doubt it has been done.

Q. Is it not an every day practice with the railroads?

A. I should think not.

Q. Is it not a frequent practice?

A. I could not even say that.

Q. Do you know whether or not—

A. I know in one case where one of our customers had lost a bill of lading and there was a great deal of difficulty in getting other bills of lading to replace them, and I think—

Q. He got it on giving an indemnity bond did he not?

A. Yes, sir. It took nearly a month before they got straightened out. A very large bond had to be given to the railroad for it.

Q. You don't know then that some railroads have a regular form of bond printed which they use in such cases?

A. No, sir.

Q. If in the case of a party desiring to secure a port bill of lading in exchange for a through railroad bill of lading he were to offer the steamship company a bond for the full amount of the value of the property stating that he had lost or could not at that time deliver the railroad through bill of lading, would it be anything extraordinary for the steamship company to accept this bond if the surety was perfectly good and issue a port bill of lading relying upon the party to whom it was given subsequently surrendering the through
397 railroad bills of lading?

A. I understand what you are getting at. I should answer that, to say that I do not think they would make a practice of it. They would do it in isolated cases where the security to their minds was ample and they were not running any risk and merely as a favor to a customer, but I would not say they would do it as a practice.

By Mr. Dufour:

Q. Would a prudent banker to whom that had been offered on one or two occasions and who had had difficulty in securing his shipments, be justified as a prudent man in simply asking the party who tendered the bill of lading how he managed to get it, or would it suggest itself to you to investigate the situation?

A. I do not understand what you mean.

Q. In your opinion would a prudent business man, a man of ordinary intelligence, in a case such as I have suggested to you, where bills of lading were offered without any explanation, be justified in business in contenting himself with simply asking the party who offered them, if they were all right, or would you consider it the duty of a prudent man to make further investigation, particularly when the carrier is around the corner?

Objection.

Mr. Blair:

Objected to on the ground that is [it] is a matter for the Court to decide, and not the witness.

A. If it was a case that occurred more than once I should think he would naturally be prompted to make some inquiries about it.

Q. It would put him on his guard?

A. I should say so.

398 June 15, 1911.

A. BRENTON, witness sworn and examined on behalf of the complainant, testified as follows:

Direct Examination.

By Mr. Dufour:

Q. What is your name?

A. A. Brenton.

Q. What is your business?

A. Vice-president of the German-American National Bank in this city.

Q. How long have you been with the German-American National Bank?

A. Since its organization in 1905.

Q. Previous to that what was your business, with what bank were you?

A. I was with the Germania National Bank as manager and manager of the Comptoir Nationale d'Escompte de Paris.

Q. Manager of its local office here?

A. Yes, sir.

Q. Previous to coming to New Orleans as manager of the Comptoir Nationale d'Escompte de Paris what experience had you in the banking business?

A. I was connected with the Comptoir in Paris, in China, in India, in London.

Q. How many years experience representing the Comptoir over all sections of the earth possibly?

A. Yes, sir.

Q. When you say you were representing the Comptoir in those various places and here—

A. I did not represent them all over. Of course I started as a—

Q. I mean you were in their employ in the various places and when you did represent them—

A. Yes, sir.

Q. What was the particular character of business you supervised for their account?

A. General business.

399 Q. Foreign exchange, the purchasing of bills?

A. Yes, sir.

Q. Was not that a large part of the business?

A. Yes, sir.

Q. The bills being drawn and purchased by you for the Comptoir?

A. Yes, sir.

Q. And the discounting of bills with securities attached?

A. Yes, sir.

Q. In the course of your experience you had a wide experience on the question of cotton bills of lading, had you not?

A. Yes, sir.

Q. Particularly here?

A. And in Bombay.

Q. Will you please explain your understanding of the meaning of the term, or understanding in the trade of the meaning of the term, engagement d'importation?

A. Referring to what?

Q. When a bank extends what it calls an engagement d'importation what does it mean?

A. It means they extend a credit for their imports to this country.

Q. Extends a credit for their imports?
A. Yes, sir.
Q. It is not a purchase for his account?
A. No, sir.
Q. Now, just explain exactly how the transactions takes place?

Objection.

Mr. Blair:
Objected on the ground that the evidence is irrelevant and incompetent to show what were the particular facts in these cases.

Q. Explain generally what the transaction is as regards the bank?

A. Well, a customer of the bank goes to the
400 bank and tells them—they say I have bought or intend to buy—this is a particular case of cotton I understand?

Q. Yes, let us take cotton?

A. They say I have bought or intend to buy cotton from a American firm located in the United States, and to reimburse that firm for the cotton they want the bank to accept drafts of that American firm on the bank drawn at 60 or 90 days sight, that is the regular time. If the bank is satisfied with what we call the banking risk of the customer the bank will extend to that customer a certain amount of credit, say, up to the number of bales according to the size of the house, and authorize the customer to give the name of the bank to the American exporting firm, and that bank will accept drafts on them accompanied by bills of lading, and insurance policy representing the cotton bought in the United States.

Q. Then in the common acceptation of the term, when such an engagement is extended it is extended to the bank's customer and the bank does not go into the business of buying the cotton itself?

A. No, sir:

Note: It is understood that the same objection applies to all these questions.

Q. The bank accepts the drafts?

A. Yes, sir.

Q. Is it common and customary for the bank to be paid for its acceptances?

A. Yes, sir.

Q. It is a common and customary revenue of banks doing that character of business, to be paid for their acceptances?

A. Yes, sir.

Q. And they look to the customer for the mar-
401 gin, look to the banking credit of the customer for any differences that might exist?

A. Yes, sir.

Q. They know nothing of the samples of the cotton ordinarily?

A. No, sir.

Q. It is just a plain ordinary business transaction by which they lend their name to the customer for a consideration?

A. Yes, sir.

Q. Acceptances of that kind against bills of lading are done in this country too at all times, are they not—for instance, your bank will do it for outside parties in this country?

A. No, sir; because the law prohibits us—

Q. The national banking law prohibits it?

A. Yes, sir; and no state bank does it, I believe.

Q. But are familiar with the custom?

A. Yes, sir.

Q. Your business at present, I think you are looked upon as a specialist in foreign exchange?

A. Yes, sir.

Q. I mean your experience qualifies you for that?

A. Yes, sir.

Q. When you take a draft—let us take this case, say, if I come to you with a draft against the Comptoir Nationale d'Escompte and we will use the full name because there are two Comptoir's in this case—with documents attached, for discount against acceptance, what are the documents which you require to be attached to that draft, and that any prudent reasonable business man or bank man would require to be attached to that draft?

A. It depends on the firm that wants to sell the
402 exchange.

Q. I mean an ordinary firm?

A. There are no requirements. I buy drafts without documents, what we call open drafts.

Q. But when you buy drafts with documents?

A. When we buy drafts, what we call documentary drafts, we require the bill of lading and the certificate of insurance on the goods. In some cases the insurance is effected on the other side on the blanket policy of the cotton buyer on the other side, and we take a declaration of the importer that the insurance is effected on the other side.

Q. But as to insurance, you require one or two things, either a certificate of insurance or a specific declaration from a party satisfactory to you that it is covered on the other side?

A. From the seller of the draft.

Q. Why do you take the bill of lading?

A. Why do we take the bill of lading?

Q. Pardon me, but why do you take a bill of lading?

A. Because it is a part of the contract. The draft is drawn on a buyer and most of those cotton contracts carry a clause that the reimbursement will be effected by drafts on such a bank, accompanied by bills of lading.

Q. Do you take the bills of lading in order to retain control of the property until such time as it is delivered by the vendors?

A. Until such time as the draft is accepted?

Q. It is the custom after the draft is accepted by you to surrender the papers?

A. To the bank, yes.

Q. Therefore, you take the paper as a protection for the control of the property until the draft is accepted by the party against whom it is drawn?

A. Yes, sir.

403 Q. Now, if I come to you as a banker, let us take this case, that I had drawn on you for a thousand bales of cotton—

A. Excuse me, you mean on me as a banker here?

Q. As a banker anywhere, as a banker generally, and as a business man, and drawn on you for a thousand bales of cotton, to which I attach the papers which you refer to, that is, I attach through bills of lading, we will say issued by the Southern Railroad Company via the French Line, January-February shipments. I attach to my draft the insurance papers. You accept that draft and come into possession of the

bills of lading. Now, if suppose at a subsequent date I came to you with port bills of lading from the port of New Orleans for that same cotton without any insurance papers, but I walk into you [your] office and say, "Here, give me back my through bills of lading, here are port bills of lading," would that be a regular transaction?

A. Well, it depends where the draft is drawn on, where I am located.

Q. How do you mean, where you are located?

A. If the draft is drawn on me in New Orleans, if I am a banker in New Orleans knowing the customs and the rules of this port, I may ask many questions before I will accept. Now if I am is [at] a foreign port—

Q. Let us take France?

A. Havre?

A. [Q.] Yes?

A. And they ask me to do that, they offer me other bills of lading for through bills of lading I may ask some explanation, but it would not surprise me so much because it has been the custom very often principally in the olden time to replace those through bills of lading by other bills of lading, or at
404 least send the mate's receipts to be attached to the through bills of lading.

Q. Let us get down to that. You know what a mate's receipt is?

A. Yes, sir.

Q. That is a receipt that the mate signs when cotton is delivered?

A. Yes, sir.

Q. That is evidence that the steamship has the cotton and it is customary to send mate's receipts very often with the through bills of lading to people that want them?

A. Often, not all the time.

Q. But I am asking you this question. If I walk into your office and say to you—you had a through bill of lading in your possession of the Southern Railroad Company and without suggesting to you that I had indemnified the railroad or produced the evidence of that fact, I gave you a port bill of lading of the steamship line, not a mate's receipt but a port bill of lading, do I understand you to say that would not be irregular in the trade?

A. It would be unusual.

Q. That is want I to get. It would be unusual. As a matter of fact could business be done if that was not an unusual transaction?

A. Oh, yes.

Q. How?

A. If I am a banker and a customer comes to me with the original bill of lading and the customer is reliable and a good bank risk I will accept it, being on the other side not being familiar with the customs of this country, being so different in each port and each state, and I will take from that customer the bill of lading instead of the mate's receipt.

Q. You accept the bill of lading in lieu of the
405 mate's receipt?

A. You say instead of giving me a mate's receipt I understand they will give me an ocean bill of lading?

Q. I don't say—

A. I would regard it.

Q. You would recognize the right of continuing carriers to issue independent receipts?

A. I would not recognize any right because I would study each case separately.

Q. Exactly; you would consider the case was one to be studied and examined?

A. Yes, sir.

Q. That is what I mean. If you got those mates receipts you would recognize it was binding on the carrier?

A. Yes, sir.

Q. If you got another bill of lading, for the same stuff, which you were supposed to have locked up in your safe, you would immediately investigate and decide upon what the facts were?

A. I would investigate it depending on the house that is going to present the bill of lading to me. If it was a house I trusted, I would say how is it you give me an ocean bill of lading instead of a mate's receipt. Well, if the house makes an explanation that seems satisfactory to me and it is a good house I would not investigate any further.

Q. Being a good house you would not go any further in investigating it?

A. No, sir.

Q. What I want to ask you is can you recognize any custom of the trade by which the banks could do business if both the

steamship line and railroad company gave original bills of lading?

A. No, sir.

Q. You cannot imagine that?

406 A. No, sir; unless it is printed on the through bill of lading that the same will be replaced by ocean bills of lading later, and I understand that some of them have that clause.

Q. That if the through bills of lading show that the same can or will be replaced by ocean bills of lading that necessarily the parties will take the risk. But as regards a bill of lading that does not contain the clause, can you recognize that the exchange business could be done if two sets of bills of lading could be had both at the same time?

A. No, sir.

Q. It would be impossible?

A. Yes, sir.

Q. And the custom cannot change it anyway. There is no change in the custom—have you any custom by which such a thing is recognized?

A. No, sir; but it has happened.

Q. It is has happened in this case. Can you recall any cases where an attempt was ever made with you to substitute an ocean bill of lading for a through bill of lading without explaining to you the loss of the through bill of lading or explaining to you the indemnity to the steamship company?

A. I never had that experience.

Q. And you [your] experience has been very wide?

A. Yes, sir.

Q. As a matter of fact—

A. Let me add a word. I never had that experience for the last 15 years I have been here on this side. I have never had the experience, but my main experience in the cotton business has been in Bombay and here.

Q. I am going to take up a specific case with you.

407 I am going to assume that this bill of lading which I mark Brenton-1 is in your possession as a banker attached to a draft, the photograph of which I show you marked Brenton-2. Now, you have the draft and you have the bill of lading and you have accepted the draft and the bill of lading is in your possession and with the necessary insurance papers. Now, that has been in your possession for from 60 to 90 days.

I come into your office with this letter—rather my agent comes into your office—

Q. You mean your agent from the United States?

A. My agent in France comes into your office—

Mr. Blair:

State also that agent is the person to whom the bank has given the engagement d'importation has extended the credit.

Q. The bank's customer in Paris, the one to whom the engagement d'importation has been extended, transmits to you this bill of lading, the ocean bill of lading with this explanation, "Incluse nous avons l'avantage de vous remettre, Custody Bill of lading." Here follows the marks "dont vous voudres bien nous accuser reception." Then the usual close. Now I ask you if that is an act which would consider usual or customary in the trade?

Objection.

Mr. Blair:

Objected to on the ground that it is putting the witness in the place of the Judge to decide this case.

A. [Q.] As a banker, what would be the impression conveyed to your mind?

A. I cannot reply to the question in a definite manner because I have not been in Havre for the last 15 years doing a banking business and I do not know the customs and the conditions of those different contracts that have been
408 going on there. As I tell you I would look into the matter, but I understand here that the thing is produced by Mr. Scheuch, the customer of the bank is Mr. Scheuch?

Q. Yes. And the bill of lading is transmitted in that letter by Mr. Scheuch?

A. I tell you I do not want to do an injustice the bankers of Havre, taking their position in a town where I have not been doing business.

Q. What would be your understanding, how would the matter appeal to you as a prudent business man in this country?

A. I should have asked Mr. Scheuch, it [as] it was the first

time the thing had happened, how is that you deliver me ocean bills of lading instead of mates receipts, and if Mr. Scheuch had given me a satisfactory explanation, owing to the high regard in which he is held in Havre, in which he was held in Havre, I think he is so held yet in high regard, I would have been—maybe I would have been satisfied with his explanation on account of the different customs existing in the United States and the exchange and issuance of bills of lading, but I am in a very delicate position here because I cannot put myself in a position of a Havre banker.

Q. When you buy those bills of exchange you probably sent those bills of exchange on to New York?

Q. [A.] No. Some of them to New York and some direct.

Q. Some of them you send to New York?

A. Yes, sir.

Q. And they send them somewhere else?

A. Yes, sir.

Q. Can you tell me how the exchange business could be carried on if there was any custom which permitted two evidences of title to be had at the same time?

A. Two legal evidences; no, sir.

Q. Therefore, if you believed that the through
409 bill of lading was legal as I understand—

A. Yes, sir.

Q. And you believed that the port bill of lading was legal, it would immediately convey to your mind the impression there were two legal titles outstanding to that property which require an investigation?

A. Yes, sir. But let me add this, that very often the through bill of lading—I am giving you my personal opinion—is not considered a full document just because very often you have to get the mate's receipt to complete it.

Q. I realize that a great many people ask for the mate's receipt, but we have no mate's receipts in this case, that is what I mean, we have no mate's receipts in this case. The mate's receipts are of the standard form, are they not?

A. I could not tell you—

Q. If you were shown a mate's receipt of the Compagnie Generale Transatlantique you would recognize it, would you not?

A. In this city; yes, sir.

Q. As to cotton?

A. I don't mean I know the signature there of the second mate.

Q. No, but I mean the printed form? You recognize now this is a mate's receipt?

A. Yes, sir.

Q. You recognize that a mate's receipt is not negotiable?

A. Yes, sir.

Q. The mate's receipt itself is not negotiable?

A. No, sir; it is not.

Q. It is simply issued to show that the stuff has actually been put on board of the ship?

A. Yes, sir.

Q. And it is used in connection with through bills of lading or sometimes with through bills of lading, it supple-
410 ments the bill of lading?

A. It is a receipt from the steamer.

Q. At the time that the stuff is put on board?

A. Yes, sir.

Q. And there are some houses that always ask for it?

A. Yes, sir.

Cross-Examination.

By Mr. Blair:

Q. Suppose in the case about which you were question, Scheuch and Company of Havre was the customer of the bank who had obtained a reimbursement credit with the bank, and Steele, Miller and Company were the parties who had shipped cotton for sale, and suppose that after business had been carried on for some time and both Scheuch and Company and Steele, Miller and Company had fulfilled their obligations and both stood in high repute and the bank, which we will say in this say in this case was this Societe Generale, had no reason to doubt the business integrity of its customer, Scheuch and Company, or the business integrity of Steele, Miller and Company, and Scheuch & Co. had come to the bank and given to it a custody bill of lading covering apparently the same cotton for which the bank held through bill of lading attached to a draft which the bank had accepted, and had asked the bank to exchange those bills of lading and the bank had asked an explanation and Scheuch and Company had said that it had

received from Steele, Miller and Company the custody bills of lading with no draft or charges against the same, that Steele, Miller and Company had probably given a bond
411 to the ocean carrier to secure the return of the original through R. R. bill of lading, that they, Scheuch and Company, had every confidence in the honesty of Steele, Miller and Company, who had always fulfilled their engagements punctually and faithfully; would it be unusual or very remarkable for the bank to accede to the wishes of its customer with that explanation?

A. In this particular case of Scheuch and Company the bank might have taken the chance.

Q. Suppose you have been the banker, would you have made the exchange?

A. Yes, sir.

Q. And you would not think that you were a party to any fraud in doing so, would you?

A. No, sir.

Q. Now suppose that—

A. I don't want to be quoted as a banker that I will do that every time, but in this particular case of Scheuch and Company I would.

Q. And suppose that further explanations had been given to the bank, namely, a representative of the firm of Steele, Miller and Company had said that cotton was frequently congested in New Orleans, that by giving the steamship a guarantee he could get custody bills of lading which would enable the cotton to move more promptly through the port of New Orleans, that he had given such guarantee and in that way had obtained the custody bills of lading apparently duplicating the railroad bills of lading—

Mr. Dufour:

This hypothetical question is objected to as not being based on the facts as evidenced by the letter of Scheuch and Company to the banks which is of record in this case.

412 Mr. Blair:

I don't know what letter the counsel refers to, but the hypothetical question is based on the affidavits in this case which are just as much in evidence as the letter referred to.

Mr. Dufour:

I just want to let you know I will question the correctness of the question at the proper time.

Q. —and suppose that in several instances in which this had happened with this explanation no trouble had occurred, the cotton had been delivered, there had been no claim, nothing to arouse suspicion; would you consider that the Havre bank would be doing anything remarkable or unusual in allowing afterwards a similar request of Scheuch and Company for an exchange of a through bill of lading for a port bill of lading?

A. Upon the statement of Scheuch that Steele, Miller and Company had given a guarantee to the steamship company I would have accepted the exchange, but I cannot say that the bank was not doing something unusual.

Q. But if you had been in their place you would have accepted it?

A. Yes, sir.

Q. Have the foreign banks, the banks in France, and every accurate knowledge of the rules and practices or [of] carriers over here in respect to the issuance and exchange of bills of lading?

A. No, sir.

Q. Would it not be true to say that they have a very hazy knowledge on that question?

A. Yes, sir.

Q. And is not the knowledge so indefinite as to make them rather credulous and trustful as to customers who
413 deal with them, in regard to the issuance and exchange of bills of lading in this country?

A. I cannot answer that question. Excuse me, but that is answering in the name of banks on the other side and I beg to be excused, if you will.

Q. Now, when a bank, say, the Societe Generale, under this arrangement with Scheuch and Company, accepts a draft drawn on it by Steele, Miller and Company representing the purchase price of 100 bales of cotton described in that draft accompanied by an invoice showing correspondence between the draft and the purchase price of the 100 bales of cotton and accompanied by what purports to be a negotiable through bill of lading representing that same cotton, does not that bank

look to the cotton proper represented by that bill of lading to reimburse itself for that draft?

A. Yes, sir.

Q. Does not the bank consider itself to have control and title to that cotton as long as it holds the draft and the documents attached thereto?

A. Yes, sir.

Q. It considers itself as having full control and dominion over the cotton as long as it holds it?

A. Yes, sir.

Q. And that is the main security and reason for the acceptance of the draft?

A. Yes, sir. When a bank holds the documents—of course in some instances the bank delivers the documents to the customer.

Q. But in case where the bank holds these documents, it does so because it believes it thereby has title to pos-
414 session and control of the cotton?

A. Yes, sir; same as a collateral loan.

By Mr. Dufour:

Q. I think you are a member of the committee appointed by the clearing house to pass upon bills of lading?

A. Yes, sir.

Q. I think you have been more or less at various times appointed by the clearing house to represent it in these matters?

A. Yes, sir.

Q. You are aware of the condition of cotton and the financial world about the time of the failure of Knight, Yancey and Company, are you not?

A. Yes, sir.

Q. What was the condition of the cotton and financial world about that time as to bills of lading and exchange matters and things of that kind?

A. It was normal.

Q. I mean as to investigation and care and things of that character?

A. Well, if I may use the expression, I think it was very loose.

Q. But I mean to say at the time after the announcement

of the Knight, Yancey failure there was a jacking up on exchange matters, on bills of lading, was there not?

A. Yes, sir.

Q. Now, I will put this hypothetical question to you. Assuming you to be the banker again. On the 18th of April Knight, Yancey and Company failed and the world knows that Knight, Yancey and Company has been practicing a fraud involving millions on bills of lading. You have certain cotton coming from me and you have been telegraphing for it and cabling for it for two or three months. After the announcemen of the Knight, Yancey & Co. failure, I came in
415 your office and I asked you, give me back my through bills of lading and I will give you port bills of lading. Now, I ask you again, as a prudent man, wouldn't you require a through [thorough] explanation?

Objection.

Mr. Blair:

Objected to, first, that it is not a kind of question which can be asked of the witness, even as a expert, but is a question for the Court to decide; and, second, that the hypothetical facts stated in the question are contrary to the actual facts.

A. If the firm failed—

Q. I say, to you, at the time, would a prudent business man—

A. At what time, when the firm failed?

Q. They failed. On the 18th of April, as announced to the world, bankruptcy proceedings were instituted, and my representative came in on the 27th to see you and asked you to substitute port bills of lading for through bills of lading, what would be the impression conveyed upon you?

A. Well—

Q. Would it be usual?

A. No, sir.

Q. Would it be sufficient to put a prudent man on his guard? I don't mean to say—I don't want you to understand me a moment as trying to through [throw] any reflection upon the honesty and integrity of the gentlemen whom you have pronounced to be your friends. I disavow any such reflections on their honesty or integrity. This is simply a question—

A. I have no special friends here in this case. I know them commercially.

Q. I mean commercially. I am not seeking to have you say that these gentlemen did anything dishonorable because they did it, but all I am seeking to have you say is, how would that impress an ordinary prudent business man in charge of the exchange department of a great big banking institution? That is what I ask you.

416

A. You mean the bank who accepted the drafts?

Q. Yes?

A. Of course it would be unusual, but as I understand they had been doing that before, the same thing had been done once or twice, and the thing went through regularly?

Q. Yes?

A. As the bank after I had accepted the draft I would have taken the documents.

Q. Would you have surrendered the other bills of lading?

A. Yes; otherwise I would be believing that one of the documents was void and not legal.

Q. In other words, if you did not surrender—

A. I always understood that one was to take the place of the other when exchanging documents.

Q. Suppose one did not, suppose both sets of documents were held?

A. That is a particular case—

Q. Let us take a case where both sets of documents were held?

A. By the bank?

Q. Yes?

A. I suppose the bank was better protected.

Q. As a matter of fact that second deposit of the inland bills of lading you would look upon it as additional protection given?

Objection.

Mr. Blair:

Counsel for defendant banks represented by him objects to this as going far beyond any reasonable limits of a expert examination, and asking the witness to decide the case for the Court.

Mr. Dufour:

The witness can clear up, as he has done, some very important matters and the Court will decide and probably consider his testimony very seriously.

417 Mr. Blair:

I hope it will.

Q. Now, Mr. Brenton, let us take this case, the first case put to you were the port bills of lading were turned over to the banks and the through bills of lading given back to the shipper. Would there be anything to keep that shipper from re-negotiating those through bills of lading?

A. No, sir.

Q. Therefore when you did it just because you trusted the customer, you knew the man to whom the through bill of lading was issued could negotiate it?

A. Yes, sir.

Q. And there would be two evidences of title out against you?

A. In that case; yes, sir.

Q. And in the case where you kept them both you would consider the port bill of lading as an additional security given to you?

A. I consider it to be the real security because it was the one that replaced the through bill of lading in the previous case, the one I kept is what I would consider the real security.

Q. But you do recognize when you do surrender the through bill of lading you would permit to go on the market something that would be negotiable?

A. Yes, sir.

Q. And might be found in a third person's hands?

A. Yes, sir.

By Mr. Blair:

Q. And that is the reason why you would be influenced by the high moral character of your customer?

A. Yes, sir.

418 Q. If the port bill of lading and the railroad bill of lading represent exactly the same cotton you would not be receiving an additional security by receiving the

port bill of lading, would you, if both represent exactly the same cotton?

A. Not in quantity or quality, but receiving additional documents.

Q. You would be receiving a different kind of bill of lading representing the same thing?

A. Yes, sir.

By Mr. Dufour:

Q. I am just going to ask you to look—do you know anything about Havre?

A. Yes, sir. I have never been located there, but I have been there very often.

Q. Do you know anything about the Bulletin de Correspondence?

A. Yes, sir.

Q. I will ask you to look at this and ask you if that is a trade paper in general circulation in Havre?

A. Yes, sir; that is the Board of Trade quotations.

Q. Published in Havre?

A. Yes, sir.

Q. In general circulation in the cotton trade?

A. Yes, sir.

Q. Now, look at this date April 27th, and get back to the question—you will notice the 27th of April, announcing the failure of Steele, Miller & Co. Supposing on the 28th of April, after that date and up to the 7th of May, Steele, Miller and Co. came to you and tried to exchange bills of lading with you—

A. Direct to me?

A. [Q.] I mean Scheuch, direct through Scheuch and Company?

419 Mr. Blair:

I object to the form of the question. Scheuch and Company are not Steele, Miller & Co.

Q. Through Scheuch & Company, had come and attempted to exchange bills of lading with you, how would that impress you as a business man—what were they trying to do?

A. Of course it is a very unusual thing. But I understand the thing was done before.

Q. Once or twice?

By Mr. Blair:

Q. More than once or twice?

A. Even once or twice. And then Scheuch and Company was worth 500,000 francs, which is $100,000, which is a fair amount in France for a man to possess, and you know in all my testimony I am putting myself in the place of a banker there. It is very hard to take such a position, but I might look at the case in two ways, either Scheuch and Company was trying to protect me and himself or that Scheuch and Company was doing what he did before, supposing that Steele, had given the railroad a bond, a bond in the hands of the railroad, therefore they were perfecting title to that cotton.

Q. What I want to get at is this. Let us fix the 27th day of April as the date when this exchange took place. Now, previous to the 27th day of April you are advised that Steele and Company had gone to protest in Germany, you know that. You ask Scheuch and Company how is it that Steele has gone to protest and Scheuch and Company answers that is a mistake—you understand?

A. Yes, sir.

Q. The cotton world is turned upside down by the failure of Knight, Yancey & Company and their frauds. The Havre Bulletin, a paper of general circulation in your section, announces the failure of Steele, Miller and Company.

420 You are sitting back in your bank with bills of lading and papers attached for a thousand bales of cotton—that is not correct, the thousand bales, but I am just saying a thousand bales. Now, Scheuch and Company after all that and with no explanation beyond the letter which I gave you, hands you these port bills of lading. I ask you, as a prudent business man, if that is regular or irregular or what does it convey to a prudent business man?

A. I will answer you in the same was [way] as I did to other questions previous. I think that covers that. There are two ways of looking at it. I might consider that Scheuch and Company is trying to protect me and protecting himself accordingly because the credit was one for his own account. I have nothing to do with it. I look to Scheuch and Company as a banker there. The other phase of the question is that Scheuch and Company was simply doing what it did before was replacing through bills of lading by ocean bills of lading, because I was under the impression according to Scheuch and

Company's information that Steele, Miller and Company had given bond to the railroad company in America. Now, if such was the case the bond must have been given before the failure of Steele, Miller and Company because it takes about 10 or 12 days, and I might have accepted those bills of lading on those two phases. Now, which one I would have taken I don't know, because it is impossible for me to judge of conditions in Havre.

Q. But it was irregular it would have required consideration by you?

A. Yes, sir.

Q. It was not a usual and customary thing to you?

A. No, sir.

Q. And you would have made inquiry?

421 A. I would have questioned—

Mr. Blair:

Objected to as leading.

Q. And would you have made inquiry?

A. It entirely depends on conditions.

Q. On the surroundings at the time?

A. Yes, sir.

Q. You said something about the customs at various ports. As a matter of fact is not there a general custom resulting from what is known as the Liverpool conference?

A. Lately; yes, sir.

Q. I hand you this bill of lading. Assuming it to be a correct bill of lading, I mean correct in form, I ask you if this bill of lading is issued under the Liverpool conference, is it so stamped?

A. Yes, sir.

A. [Q.] Therefore there is a general custom concerning bills of lading, is there not?

Mr. Blair:

Objected to as irrelevant.

A. Among certain steamship companies, leading steamship companies.

Q. And that is known as the Liverpool Conference?

A. Yes, sir.

Q. And that is known to the trade?

A. Yes, sir.
Q. It is known to you?
A. Yes, sir.

By Mr. Blair:

Q. Do you know whether it is known to the Havre banks?
A. I think it is. Of course I am not there to be sure, but I think it is.

Q. Do you know whether it is known to the
422 Havre banks?
A. No, sir.

By Mr. Percey:

Q. I will ask you to assume these facts to exist and to be known to these French banks who are the defendants in these cases. Assuming that there was a firm of cotton buyers of the United States by the name of Knight, Yancey & Co. and that there was another firm of cotton buyers in the United States by the name of Steele, Miller and Co. That there [their] operations were large and the character of their operations were similar; their location in the United States in the same section of the country; assuming that Scheuch and Company of Havre was the agent of each concern and as such had arranged contracts of importation with these same banks and on the faith of those arrangements the banks had accepted drafts from Knight, Yancey & Co. running into many thousands of bales of cotton, and had likewise accepted drafts with bill of lading attached, from Steele, Miller and Company running into many thousands of bales of cotton. Now, assuming that on the 18th of April, 1910, Knight, Yancey and Company failed and it was immediately known that they had been indulging in the practice of forging bills of lading and attaching them to drafts by which means several millions of dollars had been procured by them, and that these banks themselves, or some of them, in Havre, were the holders of such forged documents. That thereafter, within a day or two after the failure, Steele, Miller and Company went to protest in Bremen, but as to the correctness of that there was a dispute and denials were made of these banks. Now, then, with that condition existing, Scheuch and Company should go to
the French banks and say here are port bills of lading
423 for the very cotton for which you hold through bills

of lading and request that you deliver him back the through bills of lading and take these port bills of lading in place. That Scheuch and Company did not offer to put up the port bills of lading in addition to the through bills of lading, but demanded an exchange. Would not a suspicion have arisen in the mind of any prudent man with this knowledge, that the through bills of lading were forgeries similar to those that Knight, Yancey and Company had used and that Scheuch was endeavoring in this way to give port bills of lading to take up the through bills of lading and protect the banking institution?

A. My suspicion might have arisen after reading the papers, but Scheuch was doing what he did before I understood, in the case. As a banker—I don't know about the legal part of it—I was bound to consider the cotton was mine because I had accepted against it anyhow and those bills of lading left the United States before the failure of Knight, Yancey & Company, which were intended for me. That is the position I take as a banker.

Q. Under those circumstances, this other matter of Knight, Yancey and Company having just come to light, and you or other banks to your knowledge having just suffered thereby, what would be the reason you would turn loose, deliver up the through bills of and accept the port bills of lading, why would you do it under such circumstances?

A. It depends, as I tell you, on the custom over there. If it was the custom to exchange those ocean bills of lading for through bills of lading or not.

Q. Wouldn't you do it because of your belief that the port bills of lading represented the cotton actually and your doubt as to whether the through bills of lading represented it?

424 Mr. Blair:

Objected to as leading.

A. That might come to my mind.

By Mr. Blair:

Q. You would regard the cotton, at any rate, as belonging to you and you were entitled to it?

A. By all means.

Q. And you would not regard it as an attempt to give you a preference?

A. Not by any means.

By Mr. Dufour:

Q. What would be the object in giving you the port bills of lading if you had already title on the through bills of lading?

A. In that case it was to show me that the cotton was coming on such a steamer, it would be the same object as it was before in the previous exchange of bills.

Q. And in the previous exchange I understand you would make those exchanges, surrender—

A. I might make them.

Q. And would surrender the through bills of lading realizing that when you did surrender them you would be giving him an opportunity of putting them back in commerce?

A. Yes, sir; but doing that on the belief that Mr. Scheuch was assured that Steele. Miller and Company had given bond to the railroad company in the United States and they had to return those bills of lading to release the bond.

Q. In other words you mean this, that if I was to come to you and assure you of a fact, even, in your ordinary banking business you would accept that statement?

A. Yes, sir.

Q. But if I tell you that another man told me
425 you would investigate it?

A. Yes, sir.

Q. In other words, Scheuch being your customer, any representation that Scheuch made to you that he knew, you would accept?

A. Not any.

Q. I mean reasonable?

A. Yes, sir.

Q. But if Scheuch made representations of what some one else told him you would investigate?

A. No, because Scheuch and Company were the agents of this firm and I would only bank on Scheuch in that case.

Q. Let us assume he is not the agent but a customer—

A. I was banking on the risk he was taking. I would look to him as being the responsible party towards me.

Q. Are you banking on the risk he was taking and if anything was wrong you would get it out of him?

A. Yes, sir. But by giving up these documents that might

be negotiated I would be doing the same thing like we do here; we give documents and trust receipts to let the cotton be transferred from the railroad to the steamer. In that case I am taking my chances, same chances. The man can go to another bank and pledge his documents to another bank? The same way that we advance money on goods from the country, we take the moral risk of the customer.

426 JEFF D. HARDIN, JR., witness sworn and examined on behalf of complainant, testified as follows:

Direct Examination.

By Mr. Dufour:

Q. What is your name?

A. Jeff D. Hardin, Jr.

Q. What is your business?

A. Freight broker and forwarding agent.

Q. How long have you been in that business?

A. Six years.

Q. Have you ever acted in that capacity for Steele, Miller and Company or did you ever act in that capacity?

A. Yes, sir.

Q. Did you act in that capacity for Steele, Miller & Company in connection with certain shipments on the Texas?

A. Yes, sir.

Q. Are you familiar with the marks of the cotton that was shipped on the Texas?

A. No, I don't think I am, I think I would know them if I were to see them.

Q. Have you the record in your office?

A. Yes, sir. I was familiar with them at the time when I gave my last testimony. The marks shown in evidence the last time I was on the stand agree with the marks in my records.

Q. State whether or not the cotton delivered on the steamship Texas, the marks of which I now hand you—I show you a memorandum marked Complainant-26 purporting to be memorandum of the bills of lading covering 2494 bales of cotton by Steele, Miller and Company ex steamship Texas, and ask you to look at this memorandum and see if you can identify

427 the cotton therein marked as the cotton shipped by you for account of Steele, Miller and Company via the steamship Texas?

A. Well, in making this statement—some of these marks I recognize, but in making this statement I assume these marks agree with the record which I furnished you in Mr. Bell's office?

Q. Yes?

A. Some of these marks I recognize though.

Q. Did you handle 2494 bales of cotton for account of Steele, Miller and Company ex steamship Texas?

A. Yes, sir.

Q. How did that cotton come to you?

A. I think 2094 bales came consigned to order of Steele, Miller and Company notify my firm.

Q. On what character of bill of lading?

A. On a domestic bill of lading.

Q. You call that a way bill?

A. No, sir; call it a domestic bill of lading.

Q. Well, do I understand you to say that bill of lading was sent to you?

A. There were several bills of lading came to me in that 2094 bales.

Q. Those bills of lading were delivered to you?

A. Yes, sir; sent by mail.

Q. Then what did you do with them?

A. I held them until the arrival of the cotton at the railroad depot and then I surrendered them to the depot and had the cotton drayed to ships' side.

Q. When you had the cotton delivered to ship's side what happened?

A. I took out ocean bills of lading. I don't remember whether they were port or custody bills of lading.

428 Q. I hand you 25 bills of lading which have been identified by Mr. Hendren as copies of the bills of lading issued by him, and ask you if that is the character of the bills which you received?

A. Yes, sir. (Witness examines documents handed to him by counsel.)

Q. How do those bills of lading read, I mean to whose order?

A. To shipper's order, notify Scheuch & Company, Havre, France.

Q. When you say shipper's order, order of whom?

A. Steele, Miller & Company. It shows Steele, Miller and Company shipments.

Q. When you got those bills of lading what did you do with them?

A. These custody bills of lading?

Q. Yes?

A. Some of them I sent in direct to Steele, Miller and Company at Corinth, Miss., and some I turned over to McKnight, who was in my office at the time that the exchange of documents was made.

Q. Then, do I understand you to say that all of the bills of lading were either sent to Steele, Miller and Company or turned over to their representative?

A. Yes, sir.

Q. On or about the dates—

A. Shown on the bills of lading.

Q. Will you please make up and present a statement showing exactly the numbers and dates of the domestic bills, together with their marks, and the railroad by which issued?

A. Well, domestic bills of lading, to start with, do not show numbers, some of them do and some of them do not.

Q. When I say number, I mean the number of bales, for instance, R D A R 100 bales.

A. Including these marks you mean?

Q. Of that steamship Texas shipment. In other words, I want you to furnish a statement showing the domes-

429 tic bills received by you—

A. I furnished the statement already.

Q. Will you—

A. I don't know whether I can do it again, because I turned my records over to Mr. Elliott.

Q. If he returns them to you will you check them and furnish that statement?

A. Yes, sir.

Q. A statement showing the original of the cotton?

A. That is already in the record.

Q. It is not in this case and we do not happen to have the record here. Now, have you copies of the letters in which you inclosed the bills of lading?

A. I did have, but since this occurred my firm, that is, the firm that represented Steele, Miller and Company, which I was connected with, has been dissolved and I have formed new connections. Now, since that was done we have moved from the Hennen Building to the Perrin Building, and then from the Perrin Building to the Whitney Central Bank Building, and my records are in pretty bad shape.

Q. In your experience as a forwarding agent, necessarily your business is with steamship and railroad lines?

A. Yes, sir.

Q. Can you tell me whether or not it is customary or usual or is recognized as a custom for a steamship company issue a port bill of lading for the stuff which is passing under a through bill of lading?

A. Issue a port bill for stuff passing on a through bill?

Q. Yes?

A. Not until the cotton has come into their possession, into the steamship's possession, or a letter from the railroad who issued the through bill of lading stating that the
430 number of the bales described in the bill of lading is on hand at their terminal and will be delivered on call of steamer.

Q. Then what would the steamer require?

A. That letter from some authorized agent of the United Fruit Company.

Q. Would they issue their port bill of lading with the through bill of lading still out?

A. No, sir; the through bill of lading would have to be surrendered. In other words, there would be one document issued in exchange of another document.

Q. But is it the custom or not for the steamship company to issue, and long recognized in the trade for a steamship company to issue its bill of lading on a through contract unless the original bill of lading is surrendered?

A. No, sir.

Q. Do you know of any exceptions to that rule?

A. No, sir; even that practice has been discounted since these failures. The steamship lines will not issue port or custody bills of lading now at all in exchange for through documents. They did prior to these failures.

Q. But they required the surrendered [surrender] of the through documents?

A. No, they require the surrender of the actual cotton.

Q. No, but I mean before?

A. Yes, sir.

Q. Have you ever heard of any custom, direct or indirect, in your business by which a bond was giving on a through shipment for the purpose of getting a port bill of lading or custody bill of lading?

Mr. Blair:

Objected to as irrelevant and incompetent testimony.

A. No, sir.

Q. How would the fact of a port bill of lading
431 and a through bill of lading being out for the same property at the same time impress the average ordinary man?

A. Well, I cannot appreciate the two genuine documents being out at the same time, that is quite impossible.

Q. I ask you how it would impress a man of ordinary common sense?

A. That there was something wrong.

Q. Something requiring an explanation?

A. Decidedly.

Cross-Examination.

By Mr. Blair:

Q. How long were you agents at New Orleans of Steele, Miller and Company?

A. I think from the latter part of the season of 1907-08 until they failed.

Q. What was the nature of your duties during that time?

A. I was the freight broker and forwarding agent for them, representing them in New Orleans in traffic matters.

Q. Now, referring to the 400 bales of cotton in controversy in the suit in which the Societe Generale is a party, will you please look at this paper which gives the marks of the 400 bales, the date of the custody bills of lading and then which purports to give the railroad bill of lading under which those 400 bales came to New Orleans and state in whose handwriting the memorandum in reference to the railroad bills of lading under which those 400 bills were brought to New Orleans, state in whose handwriting that is?

A. That is mine. To start with I did not prepare this list. This list was all prepared and presented to me.

Q. We will assume that list is correct?

A. These marks I assume are correct marks, and I will assume everything shown in here that does not appear in my writing is furnished on somebody else's evidence.

Q. Will you tell me what Mr. Dufour was ask-
432 ing you, the dates of the railroad bills of lading under which the cotton was brought here, issuing line, and the point of origin?

A. This information here is the data that I got off the copies of the bills of lading which I surrendered to the steamship company in exchange for these custody bills of lading. This is the information I had. I don't know whether that is the forwarded bill of lading or the original bill of lading.

Q. It is the bill of lading under which the cotton came to New Orleans, is it not?

A. Not necessarily. It is the bill of lading under which I effected the exchange. I don't know whether the dates and the numbers shown here will agree with the dates and numbers of the bills of lading actually issued by the railroads. I would have to know whether these were the genuine bills of lading that I was familiar with or the fraudulent ones.

Q. But they were the bills of lading under which you delivered the cotton to the steamship company?

A. They were the bills of lading under which I effected the exchange of bills of lading.

Q. In other words, in the case of these 400 bales you effected the exchange of what purported to be through railroad bills of lading for port bills of lading?

A. I did not deliver this cotton. This cotton was delivered by the railroad company to the steamship company and I surrendered the bills of lading which I had which agreed with these shown here for which the steamship issued these bills of lading.

Q. What were the dates of those through railroad bills of lading which you delivered in order that the port bills of lading might be issued for these 400 bales?

A. The dates of the bills of lading I delivered?
433 Q. Yes?

A. February 3rd—here are the dates shown here.

Q. I want you to call them off?

A. Mobile and Ohio, Columbus, bill of lading No. 79, is dated February 3rd.

Q. That purported to cover what cotton?

A. 100 bales Q P L H.

Q. Call off the others?

A. Mobile and Ohio, Columbus, bill of lading No. 80, dated February 3rd.

Q. Purported to cover what cotton?

A. 100 bales R D F E. Mobile and Ohio, Columbus, bill of lading No. 81, dated February 3rd, covering 100 bales Q R T Y. Mobile and Ohio, Columbus, bill of lading No. 82, dated February 1st, covering 100 bales Q M T A.

Q. So of those bills of lading three of them were dated February 3rd and one was dated February 1st?

A. Yes, sir.

Q. All purporting to be issued by the Mobile and Ohio Railroad Company from Columbus, Miss.?

A. Yes, sir.

Q. And those were the bills of lading which you surrendered to the railroad company?

A. Which I surrendered to the steamship company and which the steamship company gave me custody bills of lading for.

Q. Now, referring to the 100 bales of cotton marked R B T R custody bill of lading April 23rd, which is in controversy in the suit to which the Comptoir d'Escompte de Mulhouse is a party, state from the memorandum I show you what was the date of the domestic railroad bills of lading, under which that cotton was brought to New Orleans?

A. It was brought to New Orleans on the Illi-
434 nois Central Railroad from Holly Springs, bill of lading dated April 5th.

Q. Now, when the cotton reached here how was its delivery effected to the steamship company?

A. It was effected by drayage.

Q. When did you give the delivery order—

A. I gave the delivery order to the drayman on the 13th day of April.

Q. Now, referring to 100 bales of cotton marked S R U Y, which is claimed in the suit to which the Credit Havrais is a party, state from your memorandum the date of domestic bill

of lading under which that cotton was brought to New Orleans?

A. Mobile and Ohio, Macon, bill of lading date April 6th.

Q. Issued by what road?

A. Mobile and Ohio, I said that.

Q. When did you issue delivery order for that cotton to be delivered to the steamship company?

A. April 15th.

Q. Now, referring to the 10 lots of cotton in controversy in the suit to which Paul Chardin is a party, can you give me the dates of the domestic bills of lading under which that cotton was brought to New Orleans, and the dates of the delivery orders from you under which it was delivered to the steamship company?

A. I can't give you the date of the domestic bill of lading.

Q. Can you give the dates of your delivery orders?

A. Yes, sir.

Q. What were they?

A. 100 bales R T H F; 100 bales R N A M; 100 bales R I N O; 100 bales R N O I; delivery order was issued April 16th; 100 bales R M U I; 100 bales R B X K; 100
435 bales R D G B; 100 bales R S O U; 100 bales R T P N; delivery order was issued April 18th.

Q. Now, will you state from the memorandum, if you can, the date of the domestic bills of lading and the issuing road, under which the 900 bales of cotton in controversy in the suit to which the Banque de Mullhouse is a party, was brought to New Orleans?

A. I can't state the date of the bill of lading, but I can tell the date upon which the delivery order was issued. I can give the dates of bills of lading, covering 100 bales R D A R; 100 bales R U R A; and 100 bales Q A T R. These 300 bales were shipped from Philadelphia, Miss., April 11th, via M. J. & K. C. R. R. Delivery order was issued covering these 300 bales April 23rd.

Q. And what was the date of the delivery order in reference to the other 600 bales?

A. Well, 100 bales R D A K; 100 bales R D T N; 100 bales Q A R R were ordered delivered to steamer April 11. 100 bales R D H O; 100 bales R B S A; 100 bales R J K S were ordered delivered to steamer April 13th.

Q. The through railroad bills of lading in the case of the

400 bales being the lot which came here under through railroad bills of lading, do you remember how those bills of lading read; were they not to the order of Steele, Miller and Company, notify Scheuch & Company, Havre?

A. I don't know.

Q. I thought you testified to that once before?

A. If I did I don't recall it now. That is a year ago and it is pretty hard for me to remember who was to be notified.

Q. Had you ever before, as agent of Steele, Miller and Company delivered to the French Line or other steamship lines cotton coming to New Orleans on similar railroad bills of lading and received port or custody bills of lading in exchange therefor, the custody or port bills of lading
436 to the order of Steele, Miller and Company, notify Scheuch and Company, Havre, France?

A. I had.

Q. How often?

A. Well, I think only once before on through bills of lading.

Q. And how many on domestic bills of lading?

A. We have done a great deal of it.

Q. Was that the usual way of doing?

A. On domestic bills of lading.

Q. But was not that the usual way by which Steele, Miller and Company shipped cotton to Havre, shipped it on domestic bills of lading?

A. No, sir.

Q. They did it both ways?

A. Yes, sir. Most of their cotton moved on through bills of lading.

Q. Well, now in the last six months of their business had you not very frequently exchanged domestic bills of lading for through bills of lading?

A. Yes, sir.

Q. Covering many thousand bales?

A. Yes, sir.

Q. And what did you do with the custody or port bills of lading?

A. Sent them to Steele, Miller and Company, at Corinth.

Q. And over what period of time had you been doing this?

A. Doing what?

Q. Exchanging domestic bills of lading for the through bills of lading?

A. Domestic bills of lading for through—

Q. For through port bills of lading. You said you had often done that. Now, I ask you over what period of time had you done so?

A. Not for through port bills of lading because there is no such a thing as through—

Q. Call it port bills of lading?

437 A. I had been doing it practically all of that season. It was really the first season that Steele, Miller and Company ever did anything to amount to anything on port bills of lading, during that season of 1909-10 that was.

Q. About what time was that season of 1909-10 begun, what month?

A. The first of September.

Q. 1909?

A. Yes, sir.

Q. And that as I understand was the beginning of the exchange of domestic bills of lading for port bills of lading?

A. Yes, sir.

Q. And you did it very frequently during that season?

A. Yes, sir; a great deal of it.

Q. Do you remember of doing it prior to September first, 1909?

A. No, sir; I don't recall any port bill of lading business prior to that.

By Mr. Dufour:

Q. In other words, cotton was shipped to you to be shipped by vessel to Europe?

A. Yes, sir.

Q. There was nothing irregular or startling about that, was there?

A. No, sir; it is extensively done.

Q. That is your business?

A. Absolutely.

Q. The principal part of your business?

A. No. My business is handling stuff on through bill of lading.

Q. And the irregularity, if any, would consist, in such

shipments, of two sets of bills of lading being out at the same time?

A. Yes, sir.

Q. Which, I understand you to say, you cannot reconcile with your experience of your conscience.

A. No, sir.

438 Q. I hand you this document marked Hardin-1—is that in your handwriting?

A. Yes, sir.

Q. Was that furnished by you in response to a call?

A. Yes, sir.

Q. Is that correct?

A. Yes, sir.

Offer:

By Mr. Dufour:

In connection with the testimony of the witness, counsel for complainant offers, produces and files in evidence document identified by the witness headed "Loading Record, French Line, Steamship Texas, for Havre," marked Hardin-1.

Q. I understand you to say you tried to procure those letters, but I do not recall whether or not you sent those bills of lading by mail on the same day you procured them or was it your custom to send them on the same day or were they sent—

A. They were sent on the same day that I secured them.

By Mr. Blair:

Q. This statement does not give the dates of the bills of lading?

A. No, sir.

Q. But you have already given me the dates to my question as to those that were in your handwriting?

A. Of the three—

Q. Will you take that statement and insert the dates?

A. Yes, sir.

Q. Will you take this statement in reference to which you have testified and kindly inform me whether, after you have examined the dates, whether there are any mistakes?

A. If they agree as shown herein?

Q. Yes?

439 C. H. G. LINDE, witness sworn and examined on behalf of complainant, testified as follows:

Direct Examination.

By Mr. Percy:

Q. What is your name?

A. C. H. G. Linde.

Q. Were you a member of the firm of Steele, Miller & Company?

A. Yes, sir.

Q. Give us briefly your history in a business way up to the time you went into that firm?

A. I learned the cotton business in Bremen, Germany, where I served my apprenticeship in the firm of Heinaken and Vogelsang. At the end of my apprenticeship I was engaged by that firm as clerk, and continued to work for them for six months and then I left that firm in September, 1903, to accept a position as clerk in the office of Scheuch & Company at Havre, and stayed with that firm up to April, 1906. My work was clerical work in the office and I would also go out into the market, call on the different cotton merchants, and submit offers made by American firms to them, trying to place the cotton. I left that firm in April, 1906, and went to Liverpool. In Liverpool I did not get a position, but got desk room in the Liverpool branch of Heinaken and Vogelsang, and stayed about three months in Liverpool to get acquainted with the cotton business, in the future business in that market, and then I made arrangements with J. W. Knight of the firm of Knight, Yancey & Company, to come over to the States and accept a position in his office. I made the acquaintance of Mr. Knight when he was in Europe in 1905 and talked with him quite often and when I left he mentioned to me that whenever I decided to come over to the States to be sure and write him, as he would be glad to make a position for me

440 in one of his offices, and so when I decided to come to the States I availed myself of his offer. I landed in this country in August, 1906, and went to work for Knight, Yancey & Company at Birmingham at that time, and stayed with them until June, 1907. I left that firm because I was not satisfied with the work. I only got certain kind of work to do without being able to overlook the entire business. It

was too mechanical, in other words, and besides that, before going over to the States the people in Havre as well as in Liverpool had told me, now you want to watch the invoices; etc., and try to keep them from making so many mistakes; it would save us a whole lot of trouble. But with my position in Knight, Yancey & Company I was unable to do so, and that is why I quit them. A few months prior to my resignation in Knight, Yancey & Company, I was approached by Steele, Miller & Company of Corinth, Mississippi, and we discussed the proposition of doing an export business out of Mississippi. I told them I had some friends in Europe whom I felt sure were going to help me and we were going to do business, and I was sure of making a success of it. Well, we decided to try it any way, and I accepted the position with Steele, Miller & Company on a salary basis with a working interest in that firm, 10% on the profits. Now, Steele, Miller & Company had been organized in the fall of 1906, and I went with them at the end of the summer of 1907.

Q. Who constituted the firm of Steele, Miller & Company when you went with them?

A. Steele and Miller.

Q. You say it was originally organized in 1906, who was the firm?

A. Steele, Miller and a man by the name of T. E. French.

Q. When you went there French dropped out?

A. He dropped out prior to my joining that firm.

Q. When did you become a full partner with
441 them?

A. In the fall of 1908. It was carrying out our understanding. We were successful in the first season.

Q. How old are you and how old is Steele, and how old in [is] Miller at present?

A. We are all 28.

Q. So you went in the fall of 1908 as a partner. They then had been in business two years when you went there?

A. Two seasons.

Q. How much cotton did they handle those two seasons?

A. I have no record of the first season, but the first season I was with them we handled between 25,000 and 30,000 bales of cotton.

Q. They were located in Corinth, Miss.?

A. Yes, sir.

Q. What capital in a general way did you find in the business?

A. Miller was the financial partner of that firm and he put up a capital of $10,000, and by the way, as I found out last summer, that money was stolen.

Q. From whom?

A. The money was stolen from Knight, Yancey & Company in September, 1906.

Objection.

Mr. Blair:

Counsel objects to all this as irrelevant in this case and res inter alios acta, as far as the parties defendant represented by him are concerned.

Q. Now, you and Steele, put in no money?

A. No, sir.

Q. Now, the season of 1908-09, that was your first year?

A. Yes, sir.

Q. How much cotton did you handle?

A. Over 200,000 bales of cotton.

Q. Had you been the means of getting them
442 these foreign connections?

A. Yes, sir; we were very successful, and all our foreign connections were very much satisfied with the way the business was conducted and the way the shipments turned out.

Q. Who did you do business in Havre with?

A. With Scheuch & Company in Havre.

Q. Who did Knight, Yancey & Company do business with in Havre?

A. With Scheuch & Company; with Latham & Company; Lineveux, Schmidt and Company.

Q. Did you go to Europe after the close of the cotton season in 1908-09?

A. I went to Europe in the early part of May, 1909. I called on, during that trip, on all our connections, and in Liverpool and Italy. From Havre I went to Italy, Austria, Germany, and then I came back to Havre and from Havre I went to Liverpool and returned to Havre then.

Q. While you were working for Knight, Yancey & Com-

pany did you discover that they were manufacturing bills of lading and getting money on them?

A. No. I hand [had] not the least idea. Furthermore, I never saw any of those documents, those papers, those ladings.

Q. When did you first hear of any inquiry by Scheuch & Company or any one else in Havre as to the manner in which Knight, Yancey & Company were doing business?

A. After my return to Havre, after finishing my visit to Italy and those other countries. I think it was in the beginning of August, Schilling, a member of the firm of Scheuch & Company, asked me the question, are you doing business on accommodation bills of lading. I told him no, and asked him what he meant by accommodation bills of lading. He said: Well, I have got a list here of some of your shipments
that got here in the meantime, and we notice that
443 the date of the captains copy does not agree with
the date of our original. And Schilling asked me for an explanation, and I told him that probably the railroad agent had made a mistake of [or] failed to forward his copy to the port, and when he was called upon later on he just made a copy and did not care as to what date he put on there. But I asked Schilling again what was meant by accommodation bills of lading because I had never heard of such a commercial paper before, and he said well similar discrepancies had happened on Knight, Yancey & Company's shipments, and when they had inquired about it, Knight, Yancey & Company had told him, yes, they were accommodation bills of lading, ladings issued by the railroad company against surrender of the local bills of lading. In other words, cotton shipped from some point, say, on the Southern or L. & N. to Decatur, the concentration point, they would go ahead and take those local ladings and give them to the railroad agent, who in turn would issue or sign the export through bill of lading, and as it would take some time before the cotton would get to Decatur from those small stations on the road, and that accounted for the discrepancies in the dates. Now, some of the Havre people objected to the fact that they were made to pay for the interest originating from those—for the loss of interest cause [caused] by those discrepancies in dates, and Knight, Yancey & Company said all right we will pay for it, we understand that claims have been made against Knight, Yancey & Company. And they always paid them.

Q. Paid the interest?

A. Refunded the interest. Well, I told him I would look into that matter and let him know. That was all that was said about that thing.

Q. At this time did you have any knowledge
444 that your firm had been issuing bills of lading which did not represent actual cotton, at this time?

A. No, sir. I did not have any idea. Our firm had been so successful in every respect I thought myself I was worth $100,000.

Q. Well, now, when you got back to the United States in September, 1909, or was it September you got back?

A. The end of September.

Q. What member of the firm did you meet?

A. I met Steele, in New York.

Q. Did you tell him about the inquiry that Scheuch & Company had made as to those accommodation bills of lading?

A. Yes, sir; I asked him at the first opportunity. It was several days before I had a chance to have a private talk with him. He had to go to Boston, and then we had an insurance friend of ours in New York who was with us all the time, but one evening I had an opportunity to ask him: "Say, do you know what accommodation bills of lading are? I understand that Knight, Yancey & Company are doing business on such paper in Havre, and Schilling even asked me if we were doing business on such documents." He said according to his knowledge there was no such paper, but those were kites, bogus bills of lading signed in the office. The next day we proceeded South and I started to check up as to how much of this kind of cotton my firm had standing out. When I got through with my examination I found that the result was beyond all expectation; in fact, the firm was in such a hole that I did not know what to do. I found 25,000 bales of this phantom cotton. I found Mississippi banks loaded
445 with fraudulent collateral. The firm was 6,000 bales of spot cotton short, and a few days later I discovered that Miller had gone short. He had charge of the futures. He had gone short 55,000 bales of cotton, between 55,000 and 60,000 bales of futures for the firm's account, and 10,000 bales with Henry Hentz & Company of New York for his personal account. On the 25,000 bales was an average loss of about $10.00 per bales already. The mar-

ket was around 13 cents, and some of the cotton netted as low as 10 1/2; most of it netted about 11 cents. The shortage was made good later. The loss was anywhere from $10 to $20 per bale.

Q. Did you communicate to Scheuch & Company you were doing business on accommodation bills of lading just as Knight, Yancey & Company were doing?

A. I was in a pretty bad fix; I did not know what to do.

Q. This was when you were in New York?

A. No. When I was down in Mississippi—Corinth, checking up and digging. At the beginning of October I dropped Scheuch and Company a line telling them that we were doing business on accommodation bills of lading all right, and that was all that was mentioned. He seemed to be satisfied with it.

Q. At this time, that is, when you got back home, about how much cotton was owing to Scheuch & Company or the banks with whom he had arranged for the acceptances of the drafts?

A. About 25,000 bales of cotton.

Q. Had this scheme of manufacturing bills of lading begun after you left the United States that spring?

A. I am unable to tell, because I had my hands full in the export department and the financial department of that firm was attended to by Miller; he attended to that end of the business. I never noticed any delays on the cotton.

446 Q. Mr. Steele did the buying, managed this large amount of buying?

A. Yes, sir.

Q. Miller managed the finances?

A. Finances and futures and bookkeeping.

Q. Who made up these bills of lading, what individual?

A. Whoever Miller instructed to, one of the clerks. Most of the ladings were gotten up in the office, because if you leave those things to one of your local agents to do they are liable to get things mixed up, there are so many foreign names and they don't know how to spell them and get them wrong. That is why the policy was adopted to have the head office make out the ladings and sent to the agent who gets the cotton off. Take some of the German names the agents would not know how to spell them.

Q. All of this phantom cotton, upon which money had

been raised at the time that you got back down there, amounting to around 25,000 bales, was due to Scheuch & Company or to the people with whom they had arranged, was there any one else to whom cotton was due at that time as far as you recollect?

A. Some Italian mills, but I think their cotton was on the way. At the same time I saw some kicks, people complaining why in the world we don't get this cotton, where is it, and we owed some cotton to Bernard Earhardt, he had gotten it.

Q. What steps did you and Steele take, after discussing the method of doing business which Miller had put in vogue, to control the business and to make delivery of the contracts you had outstanding, and how did you get the money
447 to buy the cotton to make those deliveries?

A. In the first place, the finances and the futures were taken out Millers hands because he had shown an entire inability to attend to that part of the business in a commercial way, and furthermore, because I had found out that he had misappropriated funds of the firm for his own use through Henry Hentz and Company to cover speculation for his personal account as well as investments in securities, some Birmingham enterprise, stock in some buildings there, Empire building, and those brokers there, and as I looked at the thing the whole thing was so enormous, it was not only Steele, Miller & Co., my own firm, but Knight, Yancey & Company, they were in the same hole, Knight, Yancey & Company were way in the hole, and Steele, Miller & Company, there was the cotton season just beginning, the existence of so many people was at stake, so that Steele, as well as I, realized that we could not interfere, that we had to suffer this business to go on. Miller assured me time over again that Knight, Yancey & Company had been doing business that way for years, and in fact I was in a position to understand things which we had put on account of carelessness and negligence at a time when I was in Havre before I ever came to this country, discrepancies. I had a clue to all those things, and as to what arrangements, as to what really was at the bottom of the whole matter, Miller never committed himself, all he would say was that the railroads could not dare interfere. It was a mystery to me, how this business could have gone on for years without ever being detected. What really was at the bottom of

it I don't know, I never have been able to find out, and I don't know today. All I knew and the way I looked at it was that somebody else's name was signed to a lading
448 and that that lading represented something that did not exist, and as far as I am concerned I think it is rotten business and I never would have consented to any such scheme in my firm, but in this case I just simply had to submit. I did not have the nerve, at least, to cause this crash.

Q. Well, the fact, then, as I understand it, was that when you and Steele became aware of the enormous sums of money which had been raised on these bills of lading for phantom cotton; when you were confronted with the proposition of exposing that situation and involving the Mississippi banks and breaking Knight, Yancey & Company and doing a great deal of harm, you and he concluded not to expose it, but you curtailed Miller's control of all the business and confined him to simply continuing to manufacture bills of lading?

A. Yes, sir.

Q. And thereafter you and Steele permitted bills of lading to be manufactured upon which money was raised?

A. Yes, sir.

Q. After that time were all the funds provided with which the business was carried on, and cotton bought, by the manufactured bogus bills of lading?

A. Most of it. The best way to illustrate the thing is to compare it with a wheel, the wheel turns, there is a shortage, the shortage is made good by creating other shortage, and this new shortage is made good again by creating new shortage, and so on. By such course the discrepancy was overbridged, the shortage and things were kept moving.

Q. After the first of January, 1910, all of the drafts that you drew had bogus bills of lading attached to them?

A. Yes, sir; with a few exceptions on the Bremen shipments I think.

Q. Bernard Earhardt.

A. Yes, sir.

449 Q. But these drafts that were financed through Scheuch & Company all had attached to them bogus bills of lading?

A. Not all of them. There were some shipments to Chardin, and some shipments to Westphalen and Company that

went straight. Those were spot sales where those people kept the cotton.

Q. As to this particular cotton on the Texas, or as to the bills of lading that were attached to the drafts that are involved in this litigation, those bills of lading were all forgeries?

A. Yes, sir.

Q. What was the character of arrangement which had existed between Scheuch & Company and Steele, Miller & Company at the time that you were over there in August, 1909, and what was the character of arrangement between Scheuch & Company and Steele, Miller & Company at the time of the collapse of Steele, Miller & Company?

A. Scheuch and Company was Steele, Miller & Company's agents.

Q. During the whole time or at the end?

A. They were Steele, Miller & Company's agent all the time, but during the sum of 1909 they received consignments. Before I left I said it is better we send our cotton to Havre, we don't want to do any mill business through the summer season; the summer business is always less satisfactory to a cotton shipper, so we decided to send all our cotton to Havre where we would get all the benefit in the better out turn in grade or staple and a gain in weight, and Scheuch & Company consented to take care of those consignments.

Q. Did you close up that arrangement with Scheuch & Company in August, 1909, when you were over there; fix the way they would represent you during the coming season?

A. This arrangement was made by cable before I sailed in May, 1909.

Q. Was it confirmed in these conversations you
450 had with him over there?

A. Yes, sir.

Q. How much was Scheuch & Company to get for acting as your agents?

A. They were going to get one per cent. commission.

Q. Who was to provide the banks upon whom Steele, Miller & Company were to draw?

A. Against these consignments?

Q. Yes?

A. Scheuch & Company.

Q. How much were the banks to be paid for their acceptances?

A. A quarter per cent, the usual customary rate.

Q. You would draw for the market value of the cotton?

A. Yes, sir. Against the Havre quotations, so and so much on futures which would represent the market value of the cotton.

Q. If the cotton arrived and was sold by Scheuch & Company as your agents and the drafts were taken up before their maturity the bank got its quarter per cent?

A. Yes, sir.

Q. If the cotton did not arrive, or after having arrived, was not sold by the time the drafts matured, you would pay the bank interest thereafter, after the date of the maturity?

A. Yes, sir; after the date of the maturity the bank would charge interest for carrying.

Q. Did you provide Scheuch & Company with blank drafts signed by Steele, Miller & Company, to take up the drafts when the cotton had not arrived before maturity?

A. That was done in February, 1910.

451 Objection.

Mr. Blair:

Counsel objects to all this evidence on the ground it is irrelevant and res inter alios acta so far as any of the defendant banks represent [represented] by me are concerned.

Q. That was done in February, 1910. How many blank drafts did you send over and for what purpose?

A. We sent two books. The purpose was, after maturity of 60 or 90 days sight draft, the bank would he-accept a new 60 or 90-day sight draft drawn on them and these drafts with the banks acceptances on them would be re-discounted, which enabled the Havre banks to get advances from the Bank of France.

Q. Did you accumulate a stock of cotton in Havre?

A. Yes, sir.

Q. That cotton was sold from time to time by Scheuch and Company for your account?

A. That cotton was reclassed after arrival by some small spot broker and then exhibited in their shops and people would come in and buy it off the table. Some of the cotton was tendered by Scheuch & Company against delivery sales.

Q. Have you any papers with you showing just how Scheuch & Company handled you [your] business over there?

A. Yes, sir.

Q. I now hand you a memorandum from Scheuch and Company dated 28th January, 1910, a letter dated February 26, 1910, a letter dated March 22, 1910, and a memorandum dated April 2, 1910, and ask you to explain these papers for the purpose of showing the manner in which the business with Scheuch and Company was being conducted, and number these papers exhibits 1, 2, 3 and 4 to your disposition?

452 Objection.

Mr. Blair:

To all of which testimony counsel objects as irrelevant and res inter alios acta so far as any of the defendants represented by me are concerned.

Mr. Percy:

I understand that objection goes to everything and may be offered at any time.

A. Exhibit No. 1 is a notice notifying Steele, Miller and Company of the disposition of some of the consigned cotton which in this case was tendered against delivery contracts to Paul Chardin. Scheuch and Company gave detailed statement containing the consignment numbers and cypher which were adopted to keep this very extensive business straight, and to facilitate checking up.

Exhibit No. 2 is on the same order as Exhibit No. 1.

Exhibit No. 3 is on the same order as Exhibit No. 1.

Exhibit No. 4 is a memorandum notifying Steele, Miller and Company of the fixing of prices by Paul Chardin of 50 bales of cotton bought for April delivery against which Scheuch and Company covered 50 bales of futures.

Q. When that fixing of price was given by Paul Chardin was it then the future contracts were closed out?

A. Yes, sir. That was the basis for the invoice price to Paul Chardin, so and so much on.

Q. Speaking of Paul Chardin, what is Paul Chardin, who are Paul Chardin, what character of business do they do?

A. Paul Chardin is in Paris, located in Paris. I understand they do a general merchandise business and banking business. They sell, handle indigo.

Q. They have two brances of business, a mercantile business and a banking business?

A. Yes, sir; and they maintain a cotton branch in Havre, and their Paris banking department would finance the cotton transactions of the Havre branch.

453 Q. These acceptances of drafts by Paul Chardin were a part of the banking business?

A. Yes, sir; these acceptances by Paul Chardin—the proposition was this, everything goes in the general pot with Paul Chardin, the general profits of the firm. They, of course, wanted to make their banking commission. Now, if Steele, Miller and Company had drawn against delivery sales, in other words, against delivery sales of cotton that was to be re-classed in Havre, and then tendered to Paul Chardin, then they would not have gotten the banking commission. So, in order to let their Paris branch make this banking commission, why Paul Chardin was used just like any other French bank. To further illustrate this, Paul Chardin might be carrying, or might have accepted 500 bales of cotton drafts for Steele, Miller & Company, and Steele, Miller and Company might be owing 500 bales of cotton, why, Paul Chardin would not get that cotton shipped against the draft accepted by their Paris branch because the cotton was reclassed in Havre, and it might happen they got too good a grade or a grade not up to quality so they merely acted as a banker in acceptances against these delivery contracts.

Q. In other words, Steele, Miller and Company might have sold Paul Chardin through Scheuch and Company 500 bales of cotton for May delivery?

A. Yes, sir.

Q. Of such and such a grade?

A. Yes, sir.

Q. Paul Chardin might have accepted drafts with bills of lading attached for 500 bales of cotton, but that did not mean at all that the cotton that accompanied the drafts

454 would be the cotton they would get upon their contracts of purchase?

Objection.

Mr. Blair:

Objected to as leading.

A. No, not unless instructed by Steele, Miller & Company. If Steele, Miller and Company shipped some cotton that would fill the required grade there was no necessity of going to any extra work and trouble. Then Scheuch & Company would be notified that Chardin can keep that cotton, tender that cotton to Chardin against this delivery purchase.

Q. When did you make a trip to Havre after you discovered that the bills of lading which were held by the French banks represented phantom cotton?

A. I made two trips to Havre. The first trip at the end of December, 1909, and the second trip at the end of February, 1910.

Q. How much cotton did you have there in December when you went over?

A. We had a stock of about 20,000 bales.

Q. Were you there to help work it off?

A. The reason why I went there in December was because in consequence of this bull manipulation. The market had gone sky high and those Havre people that were carrying hedges against these consignments were having a pretty hard time to meet all those margin calls, and as there was a prospect of relieving that situation in Havre by re-shipping cotton to New York and tender against futures, if the basis every [ever] got right, I went over to Havre to look after the business and make the necessary arrangements for such tenders if possible and practicable.

Q. These banks, whenever they would accept a draft with bill of lading attached, would they sell futures?

455 A. Why, Scheuch and Company would be notified and they would sell futures against the consignments and tell the future broker to make out his ticket in the name of such and such a bank, and then the bank would carry the futures and thus hold both ends of the transaction, the spot end and the future end.

Q. And when the spot cotton was not being delivered and the market was going up, why they, of course, became very much alarmed?

A. It was not so much a question of spot cotton not being delivered at that time. It was more so that they had to put

up such a lot of margin on cotton, and it was a strain in the whole financial business there on everybody.

Q. On that trip in December, did you tell Scheuch and Company about these bills of lading not representing genuine cotton, that they held?

A. No, sir. It was not until my second trip when I got to Havre the second time in March.

Q. On that trip in December did you hear any inquiry in Havre about the discrepancy in the dates in the bills of lading either from your own house or from Knight, Yancey and Company?

A. No; there was no more said about it. Those discrepancies had been happening for so many years. The bank would sign a slip of paper to satisfy the consignee of the boat, and nothing was said by them. In fact, at that time they were not so anxious for cotton in Havre because they had had this strike in Havre, and I don't know how many boats were tied up in November; it was in November the dock men struck, and finally the situation was relieved, all the warehouses were congested, so they were not so very anxious for the cotton, and furthermore, about the time I got to Havre, it was in the beginning of January and the market had busted all to pieces. Scales liquidated in New York smashing
456 future prices, and the market had been tumbling down, so that the situation was very much relieved then.

Q. How much cotton altogether did your firm ship to your order notify Scheuch & Company, during the season of 1909-10?

A. Between 60,000 and 75,000 bales.

Q. When did you make your second trip over there?

A. I left this country at the end of February and got to Havre in the beginning of March, the 7th or 8th of March.

Q. How long did you stay there?

A. I stayed there until the beginning of April.

Q. How much cotton did you have on hand at that time?

A. We still had a stock of about 20,000 bales.

Q. About 20,000 bales there?

A. 20,000 or 25,000 bales.

Q. In a general way, at the time of the collapse, that was about the first of May, how much cotton did you have on the

high seas for Scheuch and Company. I won't ask you to be accurate now because I am going to ask you that a little later?

A. You mean afloat to Havre?

Q. You said you had about 20,000 bales at Havre. I want to know how much you had at sea?

A. About 20,000 bales. That would have given us about 40,000 bales at Havre.

Q. Has Scheuch & Company ever rendered you a statement as to the state of account between Steele, Miller and Company and themselves?

A. Yes, sir.

Q. I mean since the failure?

A. No, I have not seen any. I don't know whether there is any or not.

Q. Did they ever undertake to render a com-
457 plete statement at any one time?

A. Yes, sir; we had a regular current account, and all debits and credits, debit and credit items would be put down on this account, but there was so much margin in cotton, so much money tied up in the transactions that were not wound up, and they were having this big stock all the time, and Steele, Miller and Company had always more or less a large amount of money tied up in that stock, and the only way to tell exactly how much would be to get exactly how much they had on hand after every bale of that cotton was disposed of.

Q. What did you do on this trip where you stayed there practically a month in Havre, what was your business there?

A. Well, during February, Scheuch and Company began cabling for cotton. During February they had two big financial disasters in France, one was right in Havre, the Clearing House had been swindled out of, I believe it was about a million dollars, five million francs, and then they had another big financial crash in Paris; I don't know what that amounted to, so it seems that the people were pretty badly shaken up in French financial centers and those banks must have gone through all this stuff they had as collateral—

Objection.

Mr. Blair:

We object to this testimony not only for the reasons covering all such testimony, but for the additional reason, that

it appears from the statement of the witness that he is not testifying to facts within his personal knowledge.

Q. Go on just like you started?

A. —and had gotten after Scheuch to find out when the cotton was to arrive in Havre, get the steamer's name, etc.

At any rate, Scheuch and Company began cabling
458 and they also stated in one of their cables to stop exchanging those port bills of lading or custody bills of lading against through bills of lading.

Q. To stop that?

A. To stop substituting them. And, furthermore, no further credits could be had in Havre for the time being. In other words, Steele, Miller and Company got blocked in Havre and I decided at the end of February to go to Havre and see how matters stood.

Q. When did you arrive there?

A. I arrived in Havre on the 7th or 8th of March.

Q. Tell what passed between you and Scheuch and Schilling with reference to these phantom bills of lading?

A. As soon as I got to Havre we talked about business, and Scheuch and Company confirmed the views I had taken of the whole situation, that everybody was pretty much up in the air by those financial disasters which created a situation of unrest and that their banks were anxious to get the cotton and they asked questions about these bills of lading and if the railroads were responsible for those accommodation bills, and I tried to dodge their questions the best I could, but Schilling especially persisted in squizzing me, and it looked to me he might go ahead and start an investigation which would have brought about a crash, so I told him and Scheuch, well, if you want to know the truth, the true situation, I am going to tell you, but this is not the place to speak about matters like that, you had better come up to my hotel, and at the hotel I explained to them how and in what shape I had found the firm upon my return from Europe in 1909, how big a swindle, how gigantic and [an] affair the whole business was, and I also explained to them what Miller had told

me about this bill of lading business, and of course
459 they were cotton men and they caught on, they understood right away, they saw clear, they could

account just like I could for things that had been mysteries to us before.

Q. You told them about Knight, Yancey and Company at the same time?

A. Yes, sir.

Q. You talked to them fully about the whole situation?

A. I put the whole matter before them.

Objection.

Mr. Blair:

Counsel objects to this on the ground that the witness should testify as to what he said and not a conclusion.

A. I submitted the whole matter on them and we did not know what to do. I was not any more advanced than I was about five months prior to that time. Steele, Miller and Company owed in Havre, I think, about 27,000 bales, Knight, Yancey and Company owed in Havre, through Scheuch & Company, I think, about 16,000 bales, of which 10,000 bales were for one firm alone, besides that we knew through the Cotton Commission Company how much cotton was sold by Knight, Yancey & Company in Bremen, and we knew of the tremendous load that was hanging over that, so a crash at that time would have been disastrous. Several French banks would have probably failed.

Q. Now, about this Cotton Commission Company, tell very briefly as to its organization, who was interested in it, and where were they operating?

A. The Cotton Commission Company was organized in August, 1909. It was a limited concern composed of Scheuch and Company and J. A. Cleymeyer, with a capital of $60,000. Scheuch and Company had 2/3 of the capital and Claymeyer 1/3.

Q. You and Steele expected to take 1/2 of the 2/3 of Scheuch & Company at the time you were in Havre, but at the time you got back and found how conditions
460 were you did not take the interest. Is that correct?

A. I had certain plans in view of branching out, I mean establishing European agencies for my firm, and I had certain plans in view that I was never able to execute, and for that purpose I made a private arrangement with Scheuch

and Company that Steele and I would take half of their 2/3 interest. Now, the Cotton Commission Company, as I said, was capitalized at about $60,000. They were supposed to do a brokerage business, commission business, and of course it does not take much money to handle that sort of business, all they have to do is to rent an office and buy some furniture and keep running say for a month or so and then commissions come in and then the firm is self-supporting. This capital of $60,000 was the financial backing of the firm.

Q. The Cotton Commission Company was located in Bremen?

A. Yes, sir.

Q. At the time that you communicated with Scheuch & Company the fact that these bills of lading which these reimbursing banks held were phantom bills, you were owing to these banks, you say about 27,000 bales of cotton?

A. Yes, sir.

Q. Had you done any business then to any amount with the Cotton Commission Company?

A. We had done a little business.

Q. After you communicated to Scheuch and Company the situation, did they agree to keep things going?

Objection.

Mr. Blair:

Objected to as leading.

A. I found Scheuch and Company in the same boat I was in. I had my hands and feet tied and they did, too, and so we could not stop that, and as I said it was like a big wheel—it had to go on turning.

461 Q. What steps did Steele, Miller & Company or Scheuch and Company or the Cotton Commission Company take, to provide money with which to buy cotton to ship these French banks or to ship to Havre to take up these drafts upon which the French banks had accepted?

A. Steele, Miller and Company were blocked in Havre and could not get any more credit there. They had to seek other credits and they began selling in Bremen, Spain I think, and Russia, and other places over there.

Q. Sales made through whom?

A. Through the Cotton Commission Company, through Earhardt, through the different bankers in different places, one broker in Barcelona, one in Milan, and—

Q. The Cotton Commission Company was the principal sales agent?

A. The Cotton Commission Company managed to get up a consignment credit in Bremen for 10,000 bales of cotton to be drawn against at 80% of the value of the cotton, that was the Deutch National Bank.

Q. Did they get any credit with other houses in Bremen, like other concerns like Knoop, Fabarius and Company, Albrecht and Company and others?

A. I believe they did. I can't say for sure, because I was not in this country and I was not attending to that part of the business. I was in Havre at that time and I did not get the details of it; in fact, I saw later on a list of the merchants names.

Q. What was done with that money that was thus raised from the Bremen cotton buyers and the German banks?

A. The wheel was kept turning and that big shortage in Havre was made good by creating new shortages.

Q. The cotton was purchased here and shipped to Havre?

A. Yes, sir.

Q. No new drafts were attached to the actual
462 cotton that moved?

A. No, sir.

Q. On this occasion when you were in Havre was there any uneasiness in cotton circles or in banking circles about these long delays in delivery by Steele, Miller and Company and Knight, Yancey and Company. Were there and [any] inquiries being noised abroad effecting the credit of these bills of lading which had been outstanding so long. Tell what you know about that?

A. No. Not that I know of.

Q. Do you know anything about any director of the Leyland Line coming down to Havre and making inquiry?

A. That was in the beginning of April. There were two steamers that got to Bremen, I think one was from Pensacola and one from Mobile, with Knight, Yancey and Company's cotton, and another steamer came to Havre from Mobile, the Meltonian, I think, with a good deal of Knight, Yancey & Company's cotton and some of Steele, Miller and Company's

cotton, and people in Bremen seem to be having trouble in getting their cotton because the consignees of the boats, representatives of the steamship line refused to deliver the cotton against the documents presented and the cotton was not surrendered until after the banks gave strong guarantees, and the same thing happened in Havre. I think the firm of Westphalen and Company had some cotton on this boat and the consignees were no more satisfied with Westphalen and Company's guarantee but insisted on Westphalen and Company getting a bank guarantee to indemnify them from any consequences and to this Westphalen and Company objected, and I think they had a row about it and that caused a director of the Leyland Line from Liverpool to come over. Now, on this boat Steele, Miller, and Company, I think,
463 had about 500 bales of cotton where the dates did not agree, but it was straightened out in the usual way by the bank giving an indemnity and they got the cotton.

Q. These matters you have been testifying about were matters of general knowledge in cotton circles, in the banking circles that did a cotton business in Bremen?

A. I expect so, because I saw telegrams from Claymeyer, who was the manager of Cotton Commission Company, he was up there, he did not know it and he wired Scheuch and Company, and John Knight cabled Scheuch and Company to please straighten that matter out.

Q. That was what matter?

A. When the consignees just flatly refused to turn the cotton loose.

Q. Is that the Knight, Yancey & Company cotton?

A. Yes, sir; that is the whole thing where the real trouble began.

By Mr. Dufour:

Q. You had some cotton—

A. We had some cotton on the Havre boat, 500 bales.

Q. In the same condition?

A. Yes, sir.

Q. The consignees refused to turn it loose?

A. Yes, sir; 500 bales. They got the cotton upon giving that bank guarantee.

By Mr. Percy:

Q. After you told Scheuch and Company of the true con-

dition of affairs did Steele, Miller & Company rapidly reduce their obligation in Havre?

A. Yes, sir.

Q. Did you have any new transactions in Havre at all?

A. None, except 600 bales with Paul Chardin.

Q. How did that come about, what was the
464 reason of having that

A. Steele, Miller and Company, my firm sent the documents on to New York covering shipments to Havre and cabled for reimbursement, and we had to get reimbursement for 600 bales on Havre, and that is how we had got 600 bales of Chardin against some later deliveries. Really that was all that was open. They were blocked with the other banks.

Q. Something was said about Mr. Lysell. Did you have any talk while you were over there in March with any of the officials of these French banks?

A. I talked with Mr. Lysell in January already. We had a little talk about business in a general way, and I explained to him the advantage of shipping cotton on port or custody bills of lading, because it gives you some positive assurance as to when you can expect your cotton to land in Europe compared to the uncertainty you always have when you buy cotton on through bills of lading.

Q. What was the real occasion of your using these port bills of lading. How did you first commence to do that and when did you first commence to do that?

A. The I. C. had an agent at Holly Springs, Miss., and that man was taken sick with typhoid fever, I think he had typhoid fever, or, he was sick in some way and was relieved of his duty and some other man took hole [hold] of his job. So Miller wanted to get those ladings back that he put out with that man's signature. He just wanted to ask Havre to return those ladings; I told him he could not expect Havre to send those bills of lading. He said I can give them others. I said you will have to give them something better if you want to get those ladings back, give them some explanation. That
is really when the firm commenced substituting for
465 the first time custody of port bills of lading against through bills of lading.

Q. About when was that. do you remember?

A. That is hard to say. I think it was in November.

Q. And it was used only for the purpose of taking up a

particular lot of forgeries that were out as to an agent at Holly Springs, Miss.?

A. Yes, sir.

Q. When did you later resort to that device in using port bills of lading?

A. In January more frequently especially when I saw that people did not object to it, that the people were satisfied with the explanation given, and the way I looked at it it got something rotten out of the way and made the business legitimate by giving the people something that was worth something.

Q. At that time did you sail for home from Havre?

A. Which time?

Q. The last time?

A. About April 11th or 12th.

Q. Where were you when you learned of the failure of Knight Yancey and Company?

A. I was on the train, on the morning of April 21st. It was the morning it came out in the Commercial Appeal, I was coming down from St. Louis, and at Jackson, Tenn., I got the Commercial Appeal and that is where I saw it in big head lines on the front page.

Q. What did you know then about the condition of Steele, Miller and Company and how long they would last?

A. Of course, I was very much upset and worried about it and I realized that the whole thing might come to a show down.

Q. Did you all begin immediately on April 22nd
466 to get ready for the collapse?

A. Not the next day. On April 21st we tried to hold the firm, but a few days later when everything was blocked, New York was turning down exchange, Europe was turning down drafts, the whole cotton business was thrown in—was in a sort of panicky state—why, we realized there was very little chance of Steele, Miller & Company pulling through, and we were settling our accounts as much as we could, squaring our accounts as much as we could, that is all we could do.

Q. What special effort did you make following the Knight, Yancey and Company failure, to get cotton over to Havre to pay these drafts?

A. Well, I had been in Havre for the last week prior to the time of my sailing to the States and I was familiar with

the Havre business, so I sat down and checked up how we stood with Havre. In fact, I was not familiar with the events that had taken place in the last few weeks in their foreign department because I had been away. I was not familiar with the details of the sales, etc., but I was familiar with the Havre business and I proceeded to check up how we stood, and I found there was so and so much cotton in New Orleans intended for Havre and we got that cotton out as quickly as possible. We got custody or port bills of lading on it and sent it to Havre.

Q. How much did you find when you got back and checked up. How much did you find you owed Havre?

A. About 5,000 bales. The balance of the stuff had gone. It was afloat, loaded.

467 Q. Now, I hand you a letter from Scheuch and Company dated April 16th, 1910, and ask you to make it Exhibit No. 5, to your deposition, and state if you know that letter and if you recognize the signature of Scheuch and Company?

A. Yes, sir; that is a letter by Scheuch and Company.

Q. I notice that in this letter—

Note: It is understood here that the same objection of irrelevancy and res inter alios acta applies to this letter and to all similar testimony.

Q. I notice in this letter written on April 16th that Scheuch and Company refer to the fact that there may be a large difference in value against you on shipments on the Kingstonian and the Memphian, amounting to possibly 120,000 francs. Do you know whether your firm remitted them any cash at that time by cable?

A. No. But when I came back I found that the firm sent them $4,000 or $5,000. I was on the ocean at that time, but when I came back I found that the firm sent them $4,000 or $5,000.

Q. Against this request—

A. Mr. Elliott knows exactly how much was sent.

By Mr. Blair:

Q. How long would it take that letter in the ordinary course to reach Corinth, dated April 16th?

A. Straight, well it ought to be there in nine or ten days, on April 26th possible.

By Mr. Percy:

Q. I notice he says in this letter that if the other shipments that are out amounting he says to about 23,000 bales that meant the stuff he had accepted over there?

A. Yes, sir.

468 Q. That if that cotton when it came in should turn out in weight and grade as the cotton on the Kingstonian and Memphian there would be something lost. The letter is dated April 16th. There was 23,000 bales still to be received by Scheuch and Company at Havre in order to take up all these forged drafts?

A. Most of them was afloat at that time.

Q. What I want to get at is: I want you to make a memorandum and show how much of that 23,000 bales they afterwards received? Here is a memorandum that may help you.

A. According to information received from the expert accountant of the trustee of Steele, Miller and Company the following cotton was not received in Havre by April 16th, the date of the letter.

Q. You mean this cotton had not been received at the time Scheuch and Company wrote the letter of April 16th.

Objection.

Mr. Blair:

Objected to not only for the general objections heretofore stated, but because the witness is not testifying even within his own knowledge.

A. According to the records of the transactions, the steamer Virginian carried 5300 bales, the steamer Honduras 3338, the Tampican 5100, the steamer Louisianian 4651, making a total of 18,989.

Q. Which was afterwards received in Havre?

A. Yes, sir. And then there was the steamer Texas which was stopped here with 2494 bales, and that other cotton that was stopped in the elevator of the Credit Havrais, 300 bales.

and 2150 bales which Scheuch and Company were instructed by Steele, Miller and Company to take up, which makes a total of 23,933 bales, which checks against Scheuch and Company's statement in the letter.

469 Q. Now, Mr. Blair, has objected to your testifying about that because you have no actual knowledge. I will ask you to state, while you do not know exactly what cotton went on what ships, you were familiar with the export end of your business?

A. Yes, sir. This information is gotten up from the list furnished by the steamship company by the expert accountant and by the expert accountant gotten up from Steele, Miller and Co.'s books. I understand those records and can prove these figures by Steele, Miller & Company's shipping books.

Q. Independent of the letter, from your own recollection is that correct?

A. Yes, sir; it is correct.

Q. I now hand you a cablegram from Corinth, Miss., to Scheuch and Company at Havre, marked exhibit No. 6, and also paper thereto attached being marked Exhibit No. 7, being statement of drafts drawn by Steele, Miller and Company on the Havre banks, and ask you to read this cable that was sent and then explain the exhibit No. 7.

A. Exhibit 6. Corinth, Miss., April 28, 1910, Scheuch, Havre, take up drafts against total 2150 bales as follows, 600 bales Kaibe, further Dolly 2188, 2190, further Etta 2161, 6466, 67, 68, 69, 73, further Hazel 2145, 50, 58, 50 Naple, further Ofen 2026, 2730. You can cover at discretion Hedges. To explain this cable, the numbers given represent invoice numbers and the other words are cyphers.

Q. Kaibe means what?

A. That is a cypher, it means consignment credit, credit such and suck [such] a bank, just like Dolly means consignment credit such and such a bank, and Etta and Hazel and

470 Naple and Ofen, all those are cyphers covering consignment credits with French banks.

Q. Now, Exhibit 7, what does that mean in this connection?

A. Exhibit 7, gives the marks and number of draft, invoice numbers referred in the cable, also the names of the different banks.

Q. And that shows that you ordered the payment of $117,278.95?

A. That is only the carrying out part of the cable.

Q. Go ahead and explain that. Exhibit 7 does not carry out the cable in full, explain what it does?

A. Exhibit 7 contains details as to marks, draft amounts and banks of 1550 bales covered under the invoice numbers of cable Exhibit 6.

Q. Now, you told them in this exhibit on the 28th of April to take up the drafts against 2150 bales of cotton?

A. Yes, sir.

Q. And they only took them up against 1550?

A. Yes, sir.

Q. Leaving out 600 bales?

A. 600 bales Kaibe was left out.

Q. That was Paul Chardin's contract?

A. Yes, sir.

Q. Did you, at the time you sent the cablegram, did your books show that you had the money with Scheuch and Company to take up the 2150 bales?

A. According to an estimate, taking in the large stock of cotton in Havre and all the cotton afloat, I estimated the money tied up in these transactions anywhere from $150,000 to $250,000.

Q. Now, have you received a statement from Scheuch and Company as to what they did under this telegram?

A. In pursuance of the instructions given by the cable on April 28th, Exhibit No. 6, Scheuch and Company mailed to Steele, Miller and Company under date of April 29,
471 Exhibit No. 8, a statement containing details of all the drafts taken up as stated in the cable with the exception of 600 bales, cypher Kaibe, (Paul Chardin). In other words, the statement covering 1550 bales, instead of 2150 bales.

Q. This statement you make Exhibit 8 to your disposition?

A. Yes, sir.

Q. This statement shows that on April 29th Scheuch and Company went to the Comptoir de Mullhouse, the Bank of Mullhouse and the Societe Generale and took up the drafts therein mentioned?

Objection.

Mr. Blair:

Objected to on the ground that the document must speak for itself.

A. Yes, sir; 350 bales Bank de Mullhouse, 1000 bales Comptoir d'Escompte de Mullhouse and 200 bales Societe Generale.

Q. Do you remember or not that a receiver was appointed of Steele, Miller and Company on the 26th of April in the suit of Cohen and Company?

A. I think they made application for a receiver. The papers were filed on April 26th, I believe, but those papers were served on the 28th.

Q. Is that the last statement you ever received from Scheuch and Company of your account with them?

A. That is the last I have seen. I have not seen any others.

Q. Well, now, considering the amount of money and cotton which your books showed was tied up with Scheuch and Company, and the amount of cotton which was shipped and was on the way to France on the 16th of April that had not arrived, and this remittance of cash, are you prepared to say, or not, as to whether Scheuch and Company is indebted to your firm at the present time?

A. According to my estimation, Scheuch and
472 Company ought to be even with my firm.

Q. Notwithstanding they had not go [got] the Texas cotton?

A. No, notwithstanding that. They will loose money if they don't get the Texas cotton.

Q. If they get the Texas cotton it will put them ahead or just even?

A. It will put them even.

Q. Between the time of the failure of Knight, Yancey and Company on the 18th of April and the time of your failure on either the 26th or the 28th of April, did you have any inquiry from the bankers and exchange brokers and cotton merchants in New York, Liverpool, Bremen and Havre, at [as] to whether you were solvent or not?

Objection.

Mr. Blair:

Objected to on the ground that this inquiry must have been by cable and the cable is the best evidence.

A. As for [far] as I remember we had several inquiries, "Are you connnected or are you involved with the failure of Knight, Yancey and Company;" other cables came asking for the steamer's name, and about cotton; New York banks were wiring about cotton, tracing it; the cables came piling in.

Q. Were you able to sell any exchange or do any business after that time?

A. No. Everything was blocked, blocked in New York and blocked in Europe.

By Mr. Dufour:

Q. What do you mean by blocked?

A. Just turned down drafts; they just quit doing business until they could see their way clear in that matter.

Q. When was that time?

A. Immediately after the failure of Knight,
473 Yancy & Company, about a day afterwards.

Q. Are you prepared to say whether or not the suspicion of the business world was directed towards you at that time?

A. I understand that some New York brokerage firm, I never have been able to find out who it was, spread the report that we were connected or a branch of Knight, Yancey and Company, and that report was spread all over Europe.

Q. You were in control of the business, were you in the office from the time you read of the Knight, Yancy and Company failure up—

A. April 21st.

Q. You were in close touch with what was going on?

A. As I said before I was checking up the Havre business; that is, those they had placed in the last few weeks I was not able to check up, being away.

Q. You knew that New York had shut down on you?

A. Certainly; yes, sir.

Q. When you speak about New York, who do you mean in New York?

A. Foreign exchange banks in New York.

Q. They had refused to take your drafts?

A. Yes, sir; and yet some drafts were taken after that date, but it showed a general disposition of the public, of the people interested in cotton; there was a general feeling of uneasiness. Now, the day afterwards, I think it was two days afterwards when reports came our drafts being turned down on Bremen and Europe, that, of course, put a stop to everything.

By Mr. Percy:

Q. Coming back a moment to how you figure you stand with Scheuch and Company, the figures you gave of all the cotton they would have received if the Texas cotton had had arrived together with the order which you gave them
474 to pay—take up 2150 bales, show 23900 and some odd bales. At the time that Scheuch and Company suggested that these made about 23,000 bales. I wish you would look over those figures again and state whether, considering what Scheuch and Company had on hand in the way of money and cotton, and the cash remittances which you had made to Scheuch and Company, if they had got the Texas cotton whether Scheuch and Company would not be owing you considerable money?

A. I am not able to tell that because I estimate—I told Scheuch and Company to take up 2150 bales and 2150 bales at $80 a bale amounts to about $170,000, and that is still above my lowest estimate, but on a total sale of cotton of 40,000 bales, the difference can easily amount to $100,000. I am not able to tell because I don't know what became of the cotton.

Q. Have you any intelligent judgment as to how you would stand with them. Of course, I don't want a mere guess that you would be even, you would be behind or you would be ahead, but if you have an intelligent judgment as to where you would stand, I would like to have it?

A. My judgment is we were about even with Scheuch and Company.

Q. After the failure of Knight, Yancy and Company did your firm make a special effort to protect Scheuch and Company and these French banks?

A. Why, there was cotton down here intended for them and we had just got that cotton out.

Q. Who got the cotton out?

A. Steele, Miller and Company through their representatives.

Q. Did any member of your firm come down
475 here?

A. Our confidential man, Mr. McKnight came down here and got out some of the shipments.

Q. What became on [of] those bills of lading that were gotten out for this cotton on the Louisianan, Tempican and the Texas. I believe those were the last vessels to go. What became of those bills of lading?

A. Of the genuine custody or port bills?

Q. Yes?

A. They were mailed to Havre.

Q. Who mailed them?

A. Steele, Miller and Company with the exception of the few that were mailed by Jim McKnight from New Orleans.

Q. He mailed a few of them from New Orleans. The balance of them were sent by Mr. Hardin up to you at Corinth, and then you mailed them from there?

A. Yes, sir.

Q. Do you know what bills of lading were sent out by McKnight from New Orleans?

A. No, sir.

Q. Have you any way of telling?

A. No, sir.

Q. In sending these bills of lading to Scheuch and Company what instruction did you give them what to do with them?

Objection.

Mr. Blair:

Objected to on the ground that if instructions were given they were in writing and written evidence is the best evidence and on the further ground applicable to all this testimony it is irrelevant and res inter alios acta as far as the defendant banks represented by me are concerned.

Q. With reference to taking up the through bills of lading?

A. You mean why those things were sent to Havre?

Q. Yes?

476 A. To take up those bogus bills they had.

Q. Was Scheuch and Company authorized to de-

liver the port bills of lading without taking up the forged bills, or did you instruct them to deliver the port bills and demand back the forged bills?

A. Scheuch and Company were instructed to deliver the custody bills against the surrender of the through bills.

Q. You wanted to get the through bills out of the way?

A. Yes, sir; we wanted to get the bogus bills out of their hands.

Q. Did you give those instructions to Scheuch verbally when you were in Havre?

A. No. Those instructions were given them when this exchange was made the first time they got the instructions and they got them on later occasions, too.

Q. When you were in Havre did you caution them particularly about getting up those forged bills after you told them about the forgeries?

A. Just send them back, just keep on sending them back as usual.

Q. Now, I ask you if you had a conversation with any of the officers of the Societe Generale in which they said how is it possible, referring to these port bills and through bills, how is it possible these gentlemen can obtain two sets of bills of lading on the same lot of cotton?

A. No. I had no conversation with those people. I understood they wrote Scheuch and Company a letter and Scheuch and Company in turn communicated with Steele, Miller and Company transmitting to Steele, Miller and Company the contents of this letter by the Societe Generale.

Q. I ask you if you did not write this letter to
477 to Mr. Steele from Havre on a date just preceding the 20th of March:

"Dear Cal. Yesterday's cable regarding Credit Havrais shipment came here just in time to notify this bank. They had another meeting of the board of directors yesterday afternoon, and asked in morning for information where their shipments were. As I already wrote you, this bank and the Societe Generale are the most dangerous ones, and you have got to get everything out of the way. I cabled you Sunday, March 20th, to on selling on the Continent, and to move first all of the Havre shipments, and then the Cococo consignments. In other words, you still have to sell at least 20,000 bales hereafter in order to do so. So get busy. Be sure and see that

all the ladings on Bremen and shipments to other ports get numbers inserted in the places provided for. I expect to sail from Liverpool on April 9th per steamer Lusitania, without stopping there though. I will cable you later. You see what Weld & Co., have got to say on this day. Tear this up after perusal."

Did you write such a letter?

A. I wrote a letter along those lines.

Q. Do you know where the letter is now?

A. I guess the original is in Mr. Miller's possession. He mailed a photograph of this letter anonymously to the post-office Inspector Watson, in order to implicate Steele and myself in case we were going on the stand and deny any knowledge of this rotten business.

Q. That photographic copy is attached to a disposition already given in the criminal proceeding. Do you know whether that is the case or not?

A. Yes, sir.

By Mr. Blair:

Q. Was that letter written from Havre when you were over there?

478 A. Yes, sir; a letter along those lines.

By Mr. Percy:

Q. At that time when you wrote this letter from Havre, it appears that the Credit Havrais was having meetings of the board of directors at which questions of where their cotton was came up, and that the Societe Generale had become, as you expressed it, very dangerous in their line of inquiry. What do you know about that?

A. Scheuch and Company told me—I knew about the Societe Generale already from the correspondence we had about that bank, and I think the Credit Havrais made inquiries, too; any way, Scheuch and Company told me about it, and that is why I say it is most dangerous.

Objection.

Mr. Blair:

Objected to on the ground that it is shown that the statements in the letter are hearsay.

A. I would like to explain about the numbers that I have referred to in that letter I wrote.

Q. Go ahead?

A. The numbers are the freight contract numbers covering engagements for ocean freight which was confirmed to the interior point. In other words the steamship contract number and the railroad contract number. I further want to say that Steele, Miller and Company had booked the freight on all of that cotton ahead and I understand that the Leyland Line filed claim for about $20,000 for freight room not filed, which I also included in my schedule filed with the referee in bankruptcy.

Q. When you returned in the fall and found that Steele, Miller and Company had gotten the money on bogus bills of lading, about 25,000 bales of cotton, what was the condition of the firm, was it solvent, or insolvent?

A. The firm was insolvent.

Q. About how much?

479 A. To the extent of $2,000,000.

Q. And as the season went on through down to the time that the bankruptcy proceedings were instituted, it had become more involved or had it managed to extricate itself?

A. As I said at the beginning of my examination these 25,000 bales had to be filled with cotton with the loss of anywhere from $10 to $20 a bale, because the spot market had gone up so much. And not only the firm was 25,000 bales short, but most of those 25,000 bales there were hedges out in Havre which made the loss twice that amount on spot cotton and on futures.

Q. So that about how much were you insolvent, how much did you owe over and above your assets in April, say the first of April on, 1910?

A. I am unable to say because I was not in this country.

Q. Was it more or less than two or three million dollars?

A. I think the liabilities had increased on account of the loss that I just explained on the outstanding cotton.

By Mr. Dufour:

Q. Were you solvent?

A. No, sir; we were insolvent.

Q. Were you solvent on the 4th of May, 1910, when you went into bankruptcy?

A. No, sir.

Q. Were you solvent on the first of April?

A. No, sir.

Q. Were you solvent on the first of March?

A. No, sir.

Q. Were you solvent on the first of February?

A. No, sir.

Q. Were you solvent on the first of January?

A. No, sir.

Q. To what extent do you consider you were in-
480 volved, 20,000, 25,000 or 30,000 bales of cotton?

A. About 28,000 bales of cotton; between 28,-000 and 30,00.

Q. Did your firm receive the money for that cotton? Had your firm received discounted drafts against that cotton?

A. Yes, sir.

Q. And you received the money?

A. Yes, sir.

Q. And you either owed the cotton or the money?

A. Yes, sir.

Q. That is, you either owed 28,000 bales of cotton or its equivalent in money?

A. Yes, sir.

Q. And included in those obligations are the drafts held which have been discussed here of the Banque de Mullhouse, the Comptoir d'Escompte de Mullhouse, the Societe Generale, Paul Chardin and the Credit Havrais. Is that right?

A. No, sir.

Q. Let me put the question another way. You received money from all of the drafts forming the basis of this suit?

A. Yes, sir.

Q. You had received this money on those drafts?

A. Yes, sir.

Q. Some of them with fraudulent bills of lading attached to them?

A. Yes, sir.

Q. You negotiated them and received the money?

A. Yes, sir.

Q. And you either owed the cotton or its equivalent in money?

A. Yes, sir.

Q. The cotton being supposedly represented by the fraudulent bills of lading?

A. Yes, sir.

481 By Mr. Percy:

Q. I will ask you about some of these drafts that are involved in this suit. Under the arrangements which existed between Steele, Miller and Company and Scheuch and Company and these banks, who had accepted these drafts, you had a right at any time to go and pay those drafts and re-take the bills of lading?

Objection.

Mr. Blair:

Objected to as leading.

A. Did we have the right—

Q. To take up those things?

A. Yes, sir.

Q. You say you did it?

A. Yes, sir.

Q. And you had been doing it all the time while you were accumulating this large stock of cotton in Havre?

Objection.

Mr. Blair:

Objected to as leading.

A. I don't quite catch—

Q. I say you had been pursuing that course all the time while you were accumulating this large stock in Havre? taking up those drafts in the banks, paying them off?

A. They would get genuine bills of lading instead; they would not get cash for it, strictly according to your way of putting it is the way we did on April 28th, we told them we would take that money and pay that bank and take up that draft.

By Mr. Blair:

Q. You would not, as a matter of fact, ship any cotton at all corresponding to those marks on April 28th?

A. Yes, sir; some of it.

Q. Just look at that—

A. I don't have to look at it. I am familiar with it. Some of that cotton was even on the way to Havre, but
482 Steele, Miller and Company had not been able to take up the drafts. Shepard and Company shipped that cotton for Steele, Miller and Company and the cotton even went ahead, but Steele Miller and Co.—it happened after April 21st—were unable to take up these drafts, that is why Shepard and Co. kept their documents covering this cotton, and some of this cotton is included in the 2150 bales which I instructed Scheuch and Company by cable to take up.

By Mr. Dufour:

Q. When you say take up, what do you mean, pay the banks?

A. Yes, sir. Whatever the amount of the draft was.

Q. Not upon the basis of the value of the cotton?

A. Why, certainly, the banks carried futures, whatever the banks bill against Steele, Miller and Company on a certain mark was, take that up.

Q. They carried futures against it?

A. Yes, sir. I want to say here that this cable, I got his cable up from my records and I got it up according to my best knowledge, because there is this discrepancy of 600 bales.

By Mr. Percy:

Q. How much cash do you remember having remitted to Scheuch and Company prior to this time, during the season?

A. Remitted, you mean cabled transfers?

Q. Yes?

A. Let us see, about $100,000 or $110,000. I would have to look it up.

Q. You mean in addition to this $117,000?

A. This $117,000 was not a remittance.

Q. That's right. Let me ask you. I will call your attention to a deposition you have given in which you say that the cash which we remitted from time to time to Scheuch and Company was $165,000. Do you remember when
483 you made the investigation of that fact, at the time you gave this affidavit—

Objection.

Mr. Blair:

Counsel objects to the witness referring to an affidavit made in some other case to which he was not a party, to which his clients were not parties, and about which he knows nothing.

Q. You say $165,000?

A. Yes, sir.

Q. How much did you say, about 100—

A. I say $110,000, maybe $120,000. I just give this information to the best of my knowledge.

By Mr. Dufour:

Q. When the question came up about which the Leyland Line Director came down to Havre, do you recall whether or not any of the 500 bales of cotton involved was claimed by the Bank de Mullhouse or the Credit Havrais or Comptoir d'Escompte de Mullhouse?

A. No, I don't remember that now.

Witness:

I would like to add to my answer in reference to my letter to Steele these numbers helped to identify the different shipments as the marks used by Steele, Miller and Company were very much alike, but these numbers were not necessary for the negotiations of the documents as even during my experience in Havre before coming to this country we received many documents without any such numbers. That can also be borne out by the New York Foreign Exchange dealers, that a good many ladings pass without any numbers, which serve merely to keep things straight in the files of the railroad office and steamship company office.

At this point the hearing was adjourned until 2 o'clock for recess.

484 2 O'clock P. M.

All parties present.

Examination of MR. LINDE resumed.

By Mr. Dufour:

Q. Who composed the firm of Steele, Miller and Company?

A. At what time?

Q. At the time of the failure and for a year previous?

A. L. C. Steele, J. H. Miller and C. G. H. Linde, myself.

Q. Where was the domicile of the partnership?

A. Corinth, Miss.

Q. Was that the place of its principal office?

A. Yes, sir.

Q. Where its business was transacted?

A. Yes, sir.

Q. Are you a citizen of Louisiana?

A. No, sir.

Q. Are you a resident of Mississippi—were you previous to your trouble a resident of Miss.?

A. Yes, sir.

Cross-Examination.

By Mr. Blair:

Q. We will take up first the case of the Societe Generale, case No. 14,243, which is concerned in a controversy over 400 bales of cotton. I will ask you to examine these photographic copies of four drafts drawn by your firm on the Societe Generale, each dated February 8th, 1910, at Corinth, Miss., to drawer's order and by them indorsed in blank, payable 90 days after sight, one No. 2178, and reciting to be drawn against 100 bales of cotton marked Q M T A; one No. 2179, reciting to be drawn against 100 bales marked Q P L H; one
485 No. 2180, and reciting to be drawn against 100 bales of cotton marked R D F E; one No. 2181, and reciting to be drawn against 100 bales of cotton marked Q R T Y, being the exhibits attached to an affidavit of J. P. Blair on file in said cause, and state whether you recognize them as drafts drawn by your firm?

A. Yes, sir; I recognize those photographs to represent drafts drawn by my firm.

Q. How did it happen that drafts covering this particular cotton were drawn against this bank, the Societe Generale?

A. The Societe Generale had opened a credit for consignment cotton.

Q. Was not this done under instructions from Scheuch and Company? In other words, before you shipped any particular cotton you would be told by Scheuch and Company the name of the particular bank at Havre with whom they, Scheuch and Company, had arranged to take or take care of the cotton?

A. Yes, sir.

Q. What papers or documents accompanied each of these drafts? You said that in your direct examination, but I want to get it again.

A. To a draft would be attached an issuance certificate, copy of an invoice and bill of lading.

Note: It is agreed that the photographic copies of the drafts may be treated as the originals, this to apply in all the cases.

Q. What was done with the drafts and documents in each case?

A. I have forgotten in each case.

Q. That is, when you drew a draft and attached the documents what did your firm do with the draft, how did it get to the Societe Generale?

A. In some cases the bill of lading would be deposited with the draft on New York on our foreign exchange
486 broker, in one of the local banks, in some cases the local bank would be given a blank draft on New York on that same foreign exchange broker and the bill of lading would be forwarded to him direct. Under separate cover the insurance certificate and the invoice copy and the foreign draft would be sent to our foreign exchange broker.

Q. But in all cases the draft would reach the Societe Generale with these documents attached?

A. Yes, sir.

Q. Were these drafts which you hold accepted and paid in due course?

A. I don't know whether these drafts were paid, but I expect so.

Q. Do you know whether they were accepted?

A. Yes, sir; they were accepted.

Q. Had your firm any dealings with the Societe Generale except to draw drafts on them when instructed by Scheuch and Company?

A. No, sir.

Q. Is that true of the Credit Havrais and the Banque de Mullhouse and the Comptoir d'Escompte de Mullhouse and the other bank?

A. Yes, sir.

Q. Who were Scheuch and Company, what was their business in Havre?

A. They were cotton commission agents and cotton merchants.

Q. Importers of cotton?

A. Yes, sir.

Q. They were engaged in the business of buying and selling cotton?

A. Yes, sir.

Q. Had they other customers besides Steele, Miller and Company?

Q. Many others that you know of?

487 A. Yes, sir; a good many.

Q. As I understand it then, it was Scheuch and Company and not Steele, Miller and Company which made whatever arrangements were made with the Havre banks in virtue of which those banks accepted and paid drafts covering certain lots of cotton described therein?

A. Yes, sir; in the cases of consignment shipments, but in cases of sales made to other Havre merchants those merchants would provide for the reimbursements.

Q. But in the case of this Texas cotton, in the case of this cotton on the steamship Texas whatever arrangements were made with the banks in virtue of which they accepted drafts drawn against that cotton, were made by Scheuch and Company and not by Steele, Miller and Company?

A. Yes, sir.

Q. And in cases were [where] Scheuch and Company sold cotton to spinners or merchants, as I understand it, those spinners or merchants would name the bank and arrange with the bank for reimbursement credit?

A. Yes, sir.

Q. But in these cases with which we are now concerned, Scheuch and Company arranged with the bank and the bank gave Scheuch and Company such credit as it gave anybody in connection with this cotton?

A. Yes, sir.

Q. And these drafts, as you say, were always accompanied by insurance certificate and negotiable bills of lading purporting to represent the cotton and by an invoice showing correspondence between the draft and the invoice?

A. They were accompanied by invoice copy, in-
488 surance certificate and bill of lading.

Q. And the invoice would show a correspondence between price of the cotton and the amount of the draft, would it not?

A. Yes, sir; the net amount of the invoice would be the amount of the draft.

Q. And the net amount of the invoice was determined by the price of the cotton less insurance and freight?

A. Yes, sir; less customary deductions, 6%, freight and brokerage, bank commission and Scheuch and Company's commission.

Q. Coming back now to the 400 bales of cotton claimed by the Societe Generale, was that cotton shipped by your firm at the date of the bills of lading attached to the drafts?

A. No, sir.

Q. Those those bills of lading were bogus or forged?

A. Yes, sir.

Q. By whom were they forged?

A. By Miller.

Q. Was the Societe Generale, as far as you know, aware at the time that those bills of lading were forged?

A. No, sir.

Q. As far as you know, did it have any reason at the time it accepted the drafts for not believing that the bills of lading attached were genuine and entitled it to the cotton purported to be covered thereby?

A. No, sir.

Q. As far as you know, did the bank have any reason at any time for not believing that the cotton described in the drafts drawn against it was on its way and would be delivered to it in due course?

A. I am in no position to say.

Q. Do you know of any reason?

A. No, I don't know of any reason.

489 Q. Of the bank not believing it?

A. No, I don't know of any reason.

Q. I am just getting at what you know because you are the only witness I have at present. Now, it is alleged in the bill of complaint in cause No. 14,243 that on or about March 23, 1910, your firm, Steele, Miller and Company, had in its possession or under its control at Columbus, Miss., a lot of 400 bales of cotton corresponding exactly in number and marks to the 400 bales against which the four drafts had been drawn against the Societe Generale. Do you know anything about that?

A. No, sir.

Q. Do you know when this cotton was acquired?

A. No, sir.

Q. From your general knowledge of the business how long would it ordinarily take to acquire, and assemble at Columbus, Miss., and get ready for shipment, a lot of 400 bales of cotton?

A. They can get out 400 bales of cotton in a day.

Q. But how long would it ordinarily require for you to assemble at a certain place 400 bales of cotton and mark and divide them into lots?

A. That depends on where it comes from. If it is local cotton brought into town by farmers and put in warehouse or press right away, the cotton can be classed and put under bill of lading and shipped out. If, however, you buy cotton that is brought into a concentration point from some small country town on the line, it may take several days before the cotton gets to the shipping point.

Q. It might or might not take considerable time to assemble and mark at a concentration point a lot of

490 cotton, depending on where you got it?

A. No, it would not take considerable time.

Q. Under no circumstances?

A. What do you call considerable time, a week?

Q. Suppose, Mr. Linde, you wanted to assemble a thousand bales of cotton at Holly Springs, Miss., and you did not have a lot of cotton at Holly Springs, Miss., wouldn't you have to go out and buy it at different places and bring it there?

A. Yes, sir.

Q. Wouldn't that take some time?

A. It depends on the facilities as to how you can buy the cotton. If there is no cotton you can't assemble the cotton at all. If there is plenty of cotton offering, why, you are in a position to assemble the cotton on short notices.

Q. And you are not able to tell us how long it took to assemble this cotton in this particular case?

A. No, sir; I was not in this country at this time.

Q. What was the object in your firm in assembling this cotton and dividing it into lots and marking it so as to exactly correspond with the lot numbers and marks of the cotton described in the drafts drawn on the Societe Generale?

A. The idea was to ship it to Havre.

Q. For what purpose?

A. To meet those drafts.

Q. The object was then to discharge the obligation to the acceptor of the drafts to deliver the 400 bales of cotton covered by the drafts?

A. Yes, sir.

Q. In other words, it was to make good the de-
491 fault of Steele, Miller and Company in failing to ship the cotton at the time the drafts were drawn and forwarded?

A. Yes, sir.

Q. Something is said in the bill of the trustee about the particular bills of lading, the genuine ones covering those 400 bales of cotton being back dated. Do you know anything about that?

A. No, sir.

Q. It is also alleged in the bill that these 400 bales of cotton moving under these inland railroad bills of lading were stopped in New Orleans by your firm's agent, J. D. Hardin, Jr., who had the through railroad bills of lading, and he surrendered the same and received in exchange from the Compagnie Generale Transatlantique custody bills of lading for the cotton. Do you know anything about that?

A. No, sir.

Q. Well, you can tell me generally what was the reason, can you, for exchanging these through railroad bills of lading for custody or port bills of lading?

A. In this case it was probably to get the cotton on the boat.

Q. Do you know what was done with the custody bills of lading in this particular case?

A. I don't know whether the custody bills of lading were taken out in this case.

Q. I state they were taken out in this case?

A. Then they were sent to Havre.

Q. For what purpose?

Q. [A.] To be exchanged against the bogus bills of lading held by the Societe Generale.

Q. What use did you expect the bank to make of the custody bills of lading?

A. To surrender these custody bills of lading at
492 the arrival of the cotton to receive same.

Q. To receive the cotton?

A. Yes, sir.

Q. Then, one purpose was to enable the banks to get possession of the cotton covered by the custody bills of lading?

A. Yes, sir.

Q. Why did you want back the railroad bills of lading?

A. In a general way—

Q. I am speaking of this particular case?

A. To get the forgeries out of the way.

Q. And why did you want the forgeries out of the way in this particular case?

A. This is no particular case as far as I am concerned. It comes under the way of handling that business.

Q. You have stated that it was the intention of your firm when it acquired, assembled and marked this cotton, to apply it to the discharge of its obligation to the acceptor of the drafts, wasn't that still your intention when your firm received the through railroad bills of lading for the cotton?

A. Yes, sir; it was the intention from the beginning.

Q. That intention continued, did it not?

A. Yes, sir; it continued.

Q. Was that your intention throughout the transaction?

A. Yes, sir.

Q. And you were carrying out that intention when you obtained the custody bills of lading and forwarded then [them] to Havre?

A. Yes, sir.

Q. Had your firm ever, on any previous occasion,
493 forwarded for delivery to the Societe Generale custody

bills of lading covering cotton apparently covered by through inland railroad bills of lading already in the possession of the bank and attached to drafts covering the prive [price] of the cotton and accepted by the bank?

A. Yes, sir.

Q. Now, I am going to read you a statement from the affidavit of the managing director of the Societe Generale and ask you whether or not the statement therein contained is correct, as far as you know. The managing director of the Societe Generale in an affidavit filed in this case stated "On three prior occasions only, namely, December 7, 1909, February 14th and April 20, 1910, the Societe Generale had received from Scheuch and Company similar custody bills of lading representing the same cotton covered by the through railroad bills of lading attached to drafts for the price of cotton which had been previously accepted by the bank and at the request of Scheuch and Company the through railroad bill of lading was in each case returned to them, each of said bill of lading covering 100 bales of cotton and the whole aggregating 300 bales out of a total of more than 6,000 bales of importation up to that time. Is that statement correct?

A. I could not say as to the number of occasions and as to the exact dates, but I do remember that sometime in December such substitution was made, such exchange was made, and that this Societe Generale wrote Scheuch and Company a letter asking a very correct question, how is it that these
494 gentlemen can obtain two sets of documents on the same lot of cotton. They went on to say, even, that they apologized for being so inquisitive, but this question was of importance to the trade in general, as some shipper might make a malpractice of such custom.

Q. You are quoting from a letter to you from Scheuch and Company, are you not?

A. Yes, sir.

Q. Quoting from memory?

A. Yes, sir.

Q. Do you know where the original of that letter is?

A. No, sir; that was about all that was stated in that letter.

Q. Have you any reason to doubt the correctness of this extract which I have read from the affidavit?

A. I have no reason to doubt it.

Q. I read further from the affidavit as follows: "When the first of such duplicating bills of lading were received we asked an explanation of Scheuch and Company, the latter responded that they had received port or custody bills of lading from Steele, Miller and Company with no drafts or charges against the same; that Steele, Miller and Company had probably given a bond to the ocean carrier to secure the return of the original through railroad bill of lading and that they had every confidence in the honesty of Steele, Miller and Company, who had always fulfilled their engagements punctually and faithfully. In this connection later of [on], after having corresponded with Steele, Miller and Company, Scheuch and Company had shown to us their correspondence with Steele, Miller and Company explaining plainly the matter. When Mr. Linde came over to Havre in January, 1910, Scheuch and Company reported to us that he confirmed verbally that his firm made such arrangements with railroad and steamship companies in order to get the cotton shipped through
495 the ports quicker. He added that from time to time and especially during the large movement of the crop the ports were literally congested by all the arrivals, and the single way how to get the cotton through quickly was to obtain a custody or port bill of lading by which the steamship companies became engaged to load the cotton on a certain steamer leaving within ten days. We believed and accepted these explanations. We had no trouble in securing the delivery of the said three hundred bales on the said custody bills of lading." Did you give such explanation about those duplicating bills of lading as the affidavit shows were repeated by Scheuch and Company to the Societe Generale?

A. I remember that in reply to Scheuch's inquiry concerning this Societe Generale matter the firm stated—

Q. I have the letter of your firm. What I am asking is did you not give the same explanation to Scheuch and Company outside of that letter?

A. Scheuch got two letters. He received one letter for the Societe Generale explaining to them that it was an exceptional case and the intention was to get the cotton loaded, to get it rushed through and get it over there, and in the second letter to Scheuch the firm went more fully into details, stating that these custody bills of lading were substitutes for the accommodation bills that were held by them, and the

firm went on to explain that it might have happened, for instance, that the out-turn of cotton assembled at the place named in the accommodation bill of lading was not suitable for the requirements of the Havre market, which mostly takes the better grades and comparatively very little tinges, and that in such a case another lot of cotton would be substituted. That is as much as I remember of it.

496 Q. Didn't you explain, when you were over in Havre, that by making such arrangement you could get the cotton to pass more quickly through the port of New Orleans?

A. Yes, sir; I told those people that a custody bill of lading or port bill of lading always contains the steamer's name and gives a certain guarantee as to when he can look for the cotton to land on the other side, while in a through bill of lading generally no steamer's name is given.

Q. In other words, you led them to believe there was nothing irregular or fraudulent in the practice and that it was simply a means of getting their cotton through more quickly?

A. Yes, sir.

Q. Did you have a conversation with Mr. Lysell, the managing director of the Banque de Mullhouse?

A. I had a conversation with him about the advantages of shipping cotton on port and custody bills of lading over the way of shipping cotton on a through bill of lading.

Q. By shipping cotton on a custody bill of lading you meant exchanging a custody bill of lading for a through bill of lading as you had done?

A. No. Just talking in a general business way.

Q. But didn't you talk to explain to him about the issuance of these duplicating bills of lading?

A. No special reference was made in that conversation to him. We talked about that proposition from a commercial standpoint. Every cotton shipper knows that it is more advantageous to buy cotton on a port or custody bill of lading than on a through bill of lading.

Q. You were examined by Mr. Percy, were you not, before the referee in bankruptcy on October 6th, 1910, at Aberdeen, Miss.?

A. Yes, sir. I don't remember the date, but it was in October last year.

Q. Do you remember these questions and answers—

497 "Q. Did you talk to Mr. Lysel about that?" (That is about substituting a port bill of lading for a through bill of lading.) "A. Yes, sir." "Q. Did you tell him anything about the object?" "A. I told Mr. Lysel the object was to get the cotton on board, get the cotton loaded." "Q. Well, how on earth could the fact that the bills were exchanged have anything to do with getting the cotton on board?" "A. He never stopped to think about it; it answered the purpose."

A. Well, I talked to Mr. Lysel about this—

Q. Answer my question first. I ask you whether you did not testify to that effect. (Hands witness testimony referred to.)

A. "This question, "In January, 1910, you say you agreed to substitute port bills of lading for the through bills?" A. Yes, sir." "Q. Did you talk to Mr. Lysel about that?" "A. Yes, sir." Now, those questions and answers are not complete, because the conversation regarding the substitution of port bills or custody bills against through bills occurred between Scheuch and Company and the Bank de Mullhouse or Mr. Lysel, the director, and my conversation with Mr. Lysel while referring to it and probably originating from it did not go into it fully, but we merely discussed the question of the advantage of getting the cotton shipped. Now, this other question, "Q. Did you tell him anything about the object?" Certainly I told Mr. Lysel about the object, that is, the object of a man that ships cotton on a port or custody bill of lading is to get his the cotton through, to get cotton to the other side.

Q. What did you mean by saying, "He never stopped to think about it; it answered the purpose?" What purpose did you have in giving that explanation?

A. Why, it refers to that conversation between Scheuch and Company and the director of the Bank de Mullhouse.

498 By Mr. Dufour:

Q. Answer the direct question, what purpose did you have?

A. Well, Mr. Lysel did not raise any question regarding the substitution. He never stopped to think about it, about the commercial impossibility of his case.

By Mr. Blair:

Q. You are trying to explain to him in such a way that he would not see the commercial impossibility?

A. I was not trying to explain anything to him.

Q. You did not want him to find that you were committing a fraud at that time?

A. I did not want him to find out anything. I had no conversation with him on the subject. I had a conversation with him along general lines.

Q. You were asked again—

A. And in the commercial way the substitution of a through bill of lading is practicable or used to be practicable. All you had to do was to present your through bill of lading at the office of the steamship line and if the cotton was here in New Orleans you would get a custody bill of lading on it. In other words, you would get a guarantee from the steamship line that the cotton is going to sail on such and such a boat.

Q. What I am getting at is this. I don't think we are at variance about it. When this question of substiuting port bills of lading for your forged bills of lading came up, you tried to give an explanation which would prevent further inquiry on the part of the banks, did you not? Was not that your object?

A. I did not have any conversation with the bank on that subject.

Q. You gave and [an] explanation to Scheuch
499 and Company for that purpose?

A. In those letters, yes.

Q. And the purpose of that explanation was to prevent further inquiry and lull the banks into believing it was all right?

A. The object was to give those people an explanation.

Q. An explanation which would satisfy them?

A. Yes, sir.

Q. It was not the true explanation, was it?

A. No, it was not the true explanation.

Q. And you gave them a verbal explanation to lull them into security, into a sense of security, so they would make no further trouble about it?

A. Yes, sir.

Q. And as far as you know, you succeeded?

A. Yes, sir. As I said in that testimony, he never stopped to think about it.

Q. The explanation was satisfactory and as far as you know the banks believed it?

A. Yes, sir.

Q. You never had any conversation on this or any other subject with any representative of the bank of the Credit Havrais or the Societe Generale, did you?

A. No, sir.

Q. Or with the Comptoir d'Escompte de Mullhouse or the Banque de Mullhouse?

A. No, sir.

Q. Now, I am going to take up, Mr. Linde, the case of the Banque de Mullhouse and ask you the same questions. I will try and abbreviate them this time. In the case of the Banque de Mullhouse No. 14,240, which is a controversy over 900 bales of cotton. Please look at the photographic copies of the nine drafts drawn by Steele, Miller and Company on the Banque de Mullhouse, each dated at Corinth, Miss., to drawer's order and by them indorsed payable 90 days after sight, viz., one No. 2,000, dated December 28, 1909, against 100 bales of cotton marked R D A R; one, No. 2007, dated December 28, 1909, against 100 bales of cotton marked R U R A; one, No. 2,008, dated December 28, 1909, against 100 bales of cotton marked Q A T R; one, No. 2100, dated January 2, 1910, against 100 bales of cotton marked R D A K; one, No. 2101, dated January 22, 1910, against 100 bales of cotton marked R D T N; one, No. 2125, dated January 26, 1910, against 100 bales of cotton marked R D H O; one, No. 2122, dated January 26, 1910, against 100 bales of cotton marked R D S A; one, No. 2124, dated January 26, 1910, against 100 bales of cotton marked R J K S; one, No. 2123, dated January 26, 1910, against 100 bales of cotton marked Q A A R, and state whether you recognize them as drafts drawn by your firm?

500

A. Yes, sir; those are drafts drawn by Steele, Miller and Company.

Q. Is what you have stated in the case of Societe Generale true in the case of the Banque de Mullhouse, namely, that these drafts for this particular cotton were drawn on this particular bank on instructions from Scheuch and Company?

A. Yes, sir.

Q. And those drafts were accompanied by the same kind

of documents or papers as you have testified accompanied the drafts in the case of the Societe Generale?

A. Yes, sir.

Q. And it is likewise true that those drafts were accepted and as far as you know have been paid?

A. Yes, sir.

Q. And it is likewise true that no cotton was shipped by your firm at the date of these drafts and that the bills of lading attached thereto were bogus?

A. Yes, sir.

501 Q. Now, I will ask you the same question as I asked you in regard to the Societe Generale. As far as you know was the Banque de Mulhouse aware at the time that these bills of lading were forged?

A. At what time?

Q. At the time of the drawing and acceptance of the drafts?

A. No, sir.

Q. Did it have any reason at the time it accepted those drafts for not believing that the bills of lading attached thereto were genuine and entitled it to the cotton purporting to be covered thereby?

A. No, sir.

Q. As far as you know, did the bank have any reason at any time for not believing that the cotton described in the drafts drawn against it had been shipped and was on its way?

A. No, sir.

Q. It is alleged in the bill of complaint, in cause No. 14,240, that on or about April 6, 1910, your firm, Steele, Miller and Company, had in its possession or under its control at Philadelphia, Miss., and at Memphis, Tenn., 900 bales of cotton corresponding exactly in marks and numbers to the nine lots of 100 bales each against which the nine drafts had been drawn against the Banque de Mullhouse. Do you know anything about that?

A. No, sir.

Q. Now, it is alleged by the trustee that when these 900 bales of cotton were shipped to New Orleans under bills of lading in favor of your firm's agent, J. D. Hardin & Co., and that when they arrived in New Orleans they were claimed by your agent and delivered to the Compagnie Gen-

502 erale Transatlantique which issued port or custody bills therefor. What became of those custody bills

of lading representing this cotton? Were they forwarded as they had been in the case of the Societe Generale?

A. Custody or port bills of lading were taken out and forwarded to Havre; yes, sir.

Q. For the same purpose as in the case of the Societe Generale?

A. Yes, sir.

Q. Now, is it true in the case of these 900 bales, as was testified by you in the case of the 400 bales of the Societe Generale, that the object or intention of your firm in acquiring and marking this cotton was to apply it to the discharge of your firm's obligation to the bank which had accepted the drafts drawn against the same number of barrels with like marks? In other words, was it the intention of your firm to discharge the obligation of your firm to the acceptor of those drafts?

A. Yes, sir.

Q. And it was still carrying out that purpose when it obtained custody bills of lading and forwarded them to Havre?

A. Yes, sir.

Q. Now, in order to avoid duplication, that is true in the case of the 100 bales of cotton claimed by the Credit Havrais of this Texas cotton and in regard to the 100 bales of cotton claimed by the Comptoir d'Escompte de Mullhouse?

A. Yes, sir—

Q. And in regard to the cotton on the Texas in which the Paul Chardin is concerned, 1000 bales?

A. Yes, sir.

At this point the hearing was adjourned for recess until 2 P. M.

2 P. M.

All parties present.

503 Cross-examination of MR. LINDE resumed.

By Mr. Blair:

Q. Do you know the firm of Paul Chardin?

A. Yes, sir.

Q. I believe you stated yesterday it was engaged in the banking business and also in the mercantile business of buying and selling cotton at Havre, France?

A. I only knew the managers of the Havre branch.

Q. And they were engaged in buying and selling cotton at Havre?

A. Yes, sir.

Q. Examine these photographic copies of 10 drafts drawn by your firm on Paul Chardin, each dated January 27, 1910, at Corinth, Miss., to drawer's order and by them indorsed in blank payable 60 days after sight, one, No. 2135, reciting to be drawn against 100 bales of cotton marked R M U I; one, No. 2131, reciting to be drawn against 100 bales of cotton marked R T H F; one, No. 2138, reciting to be drawn against 100 bales of cotton marked R B X K; one, No. 2137, reciting to be drawn against 100 bales of cotton marked R D G B; one, No. 2132, reciting to be drawn against 100 bales of cotton marked R N A M; one, No. 2133, reciting to be drawn against 100 bales of cotton marked R M B E; one, No. 2130, reciting to be drawn against 100 bales of cotton marked R I N O; one, No. 2136, reciting to be drawn against 100 bales of cotton marked R S O U; one, #213, reciting to be drawn against 100 bales of cotton marked R T P N; one, No. 2134, reciting to be drawn against 100 bales of cotton marked R N O I, being copies of the drafts annexed to the affidavit on file in said cause No. 14242, and state whether you recognize them as drafts drawn by your firm?

A. Yes, sir; those are drafts drawn by our firm.

Q. What papers or documents accompanied each
504 of those drafts?

A. Insurance certificate, copy of invoice and bill of lading.

Q. Please examine the invoices which I show you and state whether they are the invoices which accompanied those drafts?

A. Yes, sir; those were the invoices, copies and duplicates of insurance certificates.

Q. Those were the invoices that accompanied the drafts?

A. Invoice copies.

Mr. Blair:

I will ask the examiner to initial these with the date.

Agreement: It is agreed between counsel in all these cases that the duplicate insurance certificates annexed to the affidavits on file may be used as and in lieu of the originals.

Q. These 1000 bales covered by these drafts were sold to Paul Chardin, were they not?

A. No, sir.

Q. To whom were they sold?

A. This was a consignment shipment of 1000 bales of cotton which was to be reclassed in Havre and the name of Paul Chardin was used for reimbursement to enable that firm to earn the bank commission. Steele, Miller and Company had sold Paul Chardin cotton for delivery covering practically every month of the year and Paul Chardin was to be tendered the cotton against these delivery sales by Scheuch and Company except in cases where Scheuch and Company got instructions from Steele, Miller and Company to the effect that Paul Chardin can keep lot so and so, which was drawn upon him, to simplify matters.

Q. I don't know that I clearly understand you.
505 When Paul Chardin paid these drafts what did he expect to get in consideration for the thing?

A. The bank commission.

Q. Nothing else?

A. Nothing else.

Q. But the drafts were a good deal larger than the bank commission?

A. Why, certainly, but Paul Chardin acted as a bank in this transaction.

Q. Do you mean to say you did not sell any cotton to Paul Chardin?

A. Certainly, for deliveries.

Q. Suppose this cotton had come there, would it not have been turned over to Paul Chardin?

A. No, sir. It would have been turned over to the Bank Paul Chardin.

Q. Would not Paul Chardin the bank turn it over to Paul Chardin the merchant?

A. No, sir.

Q. How would the merchant get the cotton that he bought?

A. Paul Chardin can never get the cotton drawn for against these drafts, but other cotton instead, answering to description the delivery contract called for; the out-turn of this cotton might be fully good middling or fully middling, while the delivery contract called for good middling. So this cotton

would not have answered the description stipulated in the contract.

Q. Your theory is that Paul Chardin had a right to hold this cotton and was entitled to it only as a banker who had cashed drafts drawn for the price of the cotton?

A. In this transaction Paul Chardin was to be
506 treated exactly on the same basis as the Banque de Mullhouse of the Comptoir d'Escompte de Mullhouse or the Societe Generale or any of those Havre banks.

Q. He had the title to the cotton by reason of his acceptance of the draft only, and not because he had purchased this particular cotton?

A. Yes, sir.

Q. Why was the freight and insurance deducted on the invoices?

A. According to custom.

Q. Was it not because freight and insurance had been imputed in the invoice; in other words, the terms of the purchase included cost, insurance and freight, but as you had not paid freight and insurance you deducted the amount thereof from the draft?

A. The ocean freight was to be paid in Havre, therefore the amount of same was deducted from the invoice. The bank commission to be paid in Havre was equally deducted from the invoice, as was Scheuch and Company's commission.

Q. Didn't you deduct the inland freight through to New Orleans?

A. No, sir; that was prepaid.

Q. Was not this a CIF sale?

A. No, sir; this was no sale. The invoice is made up on the basis of CIF and 6% contract, because the price is on that basis. Now, according to parity tables the price corresponded to the market value allowed as drawing basis for such consignments.

Q. Was not this a sale and not a consignment?

A. No, sir.

Q. Will you look at this document which purports to be a photographic copy of sale covering this particular 1000 bales of cotton and tell me what it is—first tell me what it is?

A. This is the usual form of contract adopted by
507 Steele, Miller and Company.

Q. Is that the signature of your firm?

A. Yes, sir; a clerk of our firm.

A. [Q.] Authorized to sign these documents?

A. Yes, sir.

Q. I notice here the word consignment is scratched out and it reads, "We beg to confirm sale." Is that correct?

A. No, sir.

Q. What is the word scratched out there?

A. The word scratched out is purchased from you, the word scratched out is purchased.

Q. And it reads sale to?

A. It reads sale; yes, sir.

Q. And the words, cypher GEOF?

A. Is the cypher covering a consignment of cotton.

Q. And that same cypher appears on the invoices which you have just identified, does it not?

A. Yes, sir.

Q. On each of the invoices?

A. Yes, sir.

Q. That connects these invoices with this contract, does it not?

A. No, sir; because this is not a contract you are holding there.

Q. It connects these invoices with this document which I have shown you and which you have identified?

A. That is a memorandum. It is not even a document.

Mr. Blair:

The examiner will mark this document or memorandum, so called by the witness, with his initials and date to identify it.

Q. I suppose these ten drafts with the accompanying documents were handled in the same way in which the Societe Generale's drafts were, that is, they were forwarded and reached the person upon whom drawn with the usual documents attached?

508

A. I expect so; yes, sir.

Q. As far as you know, they were accepted or—you know they were accepted, the drafts?

A. Yes, sir; I expect so.

Q. And was the cotton shipped by your firm at the date of the drawing of these drafts and bills of lading?

A. Was the cotton on the Texas?

Q. Yes?

A. No, sir.

Q. Was Paul Chardin, as far as you know, aware at the time that these bills of lading were forged, attached to these drafts?

A. No, sir.

Q. As far as you know, did he have any reason to believe at the time he accepted the drafts that the bills of lading attached were not genuine?

A. No, sir.

Q. Did he have any reason for not believing, as far as you know, that the cotton described in the drafts drawn against him was on its way and would be delivered to him in due course?

A. You mean the bank?

Q. Yes?

A. No, sir.

Q. It alleged in the bill of complaint in cause No. 14242 that on or about April 6, 1910, that the cotton described in there [these] drafts had been assembled at Memphis and about that date shipped by Steele, Miller and Company to New Orleans under forged bills of lading to J. D. Hardin and Company and by them demanded on arrival and delivered about April 15th to the Compagnie Generale Trans-
509 atlantique, which issued custody bills of lading thereof, and that these ocean bills of lading were turned over by the firm's agent, J. D. Hardin and Company, to the firm of Steele, Miller and Company. What was the purpose of assembling, and marking this cotton to correspond with the cotton described in the drafts and shipped to Havre?

A. To take up those bogus bills held by Chardin.

Q. Was it not also to fulfill your obligation to the acceptor of those drafts to forward and deliver the cotton described in the drafts?

A. Yes, sir.

Q. And that was you [your] intention when you shipped the cotton to New Orleans and when you got out the custody bills of lading and when you shipped it to Havre to repair, as it were, the default in not shipping the cotton at the time the drafts were originally drawn?

A. Yes, sir.

Q. Now, taking up the case of the Comptoir d'Escompte

de Mullhouse, No. 14,241, examine this photographic copy of a draft drawn by your firm on the Comptoir d'Escompte de Mullhouse dated January 31, 1910, and numbered 2143, reciting to be drawn against 100 bales of cotton marked R B T R, and state whether you recognize it as a draft drawn by your firm?

A. I recognize it as a draft drawn by my firm, but there is something written on there in typewriting afterwards. It can hardly be read because there is just a faint trace. You see the figures 100 and another 100 written on top, that is merely to bring out—

Q. This copy as far as you believe is a copy of the draft?

A. Yes, sir.

Q. This draft was sent on in the same way, with
510 the same documents as you have testified in the case of the Societe Generale?

A. Yes, sir.

Q. And what you have testified about the bill of lading being forged applies to this?

A. Yes, sir.

Q. And what you have testified as to the ignorance of the bank of this forgery, and that it had no reason for not believing that the cotton had been shipped at the time, and that the bill of lading was genuine, is true of this particular case?

A. Yes, sir.

Q. Now, it is alleged in the bill of complaint that this cotton was assembled and marked to correspond with the description of the cotton in the draft and shipped from Holly Springs, Miss., April 6, 1910, under the bill of lading in favor of J. D. Hardin and Company and by them claimed and delivered to French Line and custody bill of lading obtained therefor. I presume this was handled in the same way as the Societe Generale in regard to the forwarding of the custody bill of lading and that this cotton was assembled and forwarded for the same purpose which you have testified was the purpose for which the cotton of the Societe Generale was forwarded, that is, to discharge your obligation to the acceptor of this draft?

A. Yes, sir; the Societe Generale and other banks, in the same way, to substitute and fulfill our obligation.

Q. To fulfill your obligation due to your default in not shipping in the first instance?

A. Yes, sir.

Q. Now, in the case of the Credit Havrais, I show you what purports to be a photographic copy of a draft drawn by your firm on the Credit Havrais, dated February 15, 1910, payable at 90 days, being numbered 2214, reciting to be drawn against 100 bales of cotton marked S R U E, and ask you to state whether you recognize that as a draft drawn by your firm?

511

A. No. 2214, S R U E 100 bales; yes, sir.

Mr. Blair:

This will also be marked by the examiner with this initials and date to identify it.

Q. Was this draft accompanied by the usual documents, the same as in the case of the other drafts?

A. Yes, sir.

Q. And the bill of lading attached thereto was also a forgery?

A. Was it cotton on the Texas?

Q. Yes?

A. Yes, sir.

Q. And you afterwards assembled and marked cotton to correspond with these marks in the draft and forwarded that in the same manner in which you forwarded the cotton of the other banks?

A. I don't know about that. The Credit Havrais had some cotton that moved on a through bill of lading. There was a custody bill of lading taken out on this stuff?

Q. Yes?

A. Why; yes, sir.

Q. And was the Credit Havrais likewise ignorant of the fraud practiced upon it and of the failure to ship the cotton at the time of the drawing of this draft?

A. Yes, sir; according to my knowledge.

Q. And the intention of Steele, Miller and Company in subsequently acquiring this cotton, sending it under domestic bill of lading to this port and then under custody bill of lading to Hávre was likewise to repair this default and to discharge its obligation to the acceptor of this draft?

A. Yes, sir.

512 Q. Had your firm on any previous occasion, and by previous occasion I mean prior to this shipment of cotton on the steamship Texas, that we are now discussing, forwarded for delivery to the Banque de Mullhouse custody bills of lading covering cotton apparently covered by inland railroad bills of lading already in the possession of the bank and attached to drafts accepted by the bank?

A. Yes, sir.

Q. And you had on previous occasions done the same in regard to the Credit Havrais?

A. Yes, sir.

Q. And to the Comptoir d'Escompte de Mullhouse?

A. Yes, sir.

Q. And to Paul Chardin?

A. Yes, sir.

Q. Now, referring to all five cases about which we have been questioning you, making up the cotton loaded on the steamship Texas, when you drew drafts on bogus bills of lading did your firm expect later to make good by subsequently shipping the cotton which ought to have been shipped at the time of the drawing and forwarding of the drafts?

A. Yes, sir.

Q. That was your original intention?

A. Yes, sir.

Q. In other words, it was the original intention of your firm to deliver in this way the cotton against which the drafts had been drawn?

A. Yes, sir.

Q. And you wanted to make delivery in such a way that the acceptors of the drafts would not know that the cotton had not been shipped at the time the drafts were

513 forwarded?

A. Yes, sir.

Q. You had done this frequently before the affair of the Texas cotton?

A. Yes, sir.

Q. How many bales of cotton had you sold and delivered in this way without the irregularity as to the time of shipment being discovered?

A. I am unable to say.

Q. Were there many thousands?

A. Yes, sir; many, many thousands.

Q. Would it not be true to say, then, that when you subsequently acquired, assembled and marked and shipped the various lots of cotton covered by the drafts previously drawn, you were simply doing what you had all along intended to do?

A. Yes, sir.

Q. That had been your regular way of fulfilling your obligations to the acceptors of your drafts?

A. I would not call it regular way. It was a policy adopted during the last, well, during the last three or four months of the firm's existence.

Q. Do you mean to say that only during the last three or four months you had been using forged bills of lading?

A. No. As I testified, I found about 25,000 bales of forged bills of lading standing out, but most of those 25,000 bales were made good by shipping cotton on through bills of lading against it, and the cotton was received on bogus paper.

Q. And the genuine through bills of lading were suppressed?

A. Yes, sir.

Q. Didn't you say on your direct examination that you changed this method by reason of the sickness and
514 change of a clerk of the Illinois Central R. R.?

A. Yes, sir; in December—November or December.

Q. Then, you began this new method about the first of January?

A. Not in a general way, in a few cases, and when I found that the people in Havre did not see anything objectionable in it, with the exception of the Societe Generale, it was adopted in a more general way.

Q. You tried it as a feeler, then, and finding it went through, you adopted it generally as a substitute for allowing delivery on forged bills of lading and suppressed the genuine?

A. It was not so much a question of feeling; it was an experiment which we found succeeded, was successful.

Q. But you did not answer that part of my question in which I asked you, you then substituted that method instead, of allowing cotton to be delivered on the forged bills of lading?

A. Not altogether.

Q. Did you carry it on?

A. Yes, sir.

Q. All the time down to the crash?

A. Yes, sir.

Q. So sometimes these banks of Havre would get cotton on through bills of lading that were forged, and sometimes you would substitute for the forged bills of lading custody bills of lading and deliver in that way?

A. That was the Societe Generale and I think the Credit Havrais, in some cases the old method was followed, while with a bank like the Banque de Mullhouse and the Comptoir d'Escompte de Mullhouse the new method was pretty generally adopted, especially in the last two months.

Q. You said that Scheuch and Company had
515 credit with each of these banks for a certain amount of cotton, did you not?

A. Yes, sir.

Q. Suppose he had a credit with the Credit Havrais for five thousand bales. When there was cotton out amounting to five thousand bales with drafts drawn against the Credit Havrais, then shipments which would be taken care of by the Credit Havrais would be blocked until that five thousand bales or some of it had come in. Is that right?

A. Yes, sir; we had a limit with certain banks there, what they call rulement, a sort of constant turning over.

Q. Now, when you testified in reference to telling Scheuch on your last visit that you had been using forged bills of lading, you said something, if I remember right, that you told him that to avoid the crash?

A. Yes, sir.

Q. How did you expect to avoid a crash by telling him that?

A. Schilling was asking so many questions, was so inquisitive, that thought to satisfy his curiosity he might write to a steamship company or railroad or whoever he would write to in this country.

Q. And you hoped by telling him that, and showing in what a box you were in, that he would not reveal it to anybody?

A. Yes, sir. The idea was to let him understand how serious the proposition was.

Q. And you expected him to keep it a secret?

A. Well, I did not know what he was going to do, but I knew from my own experience what a man would do in a

case where he was confronted with a situation of such gigantic extent.

Q. You expected him not to reveal it?

516 A. That is the way I believed it.

Q. You testified in being examined by Mr. Percy that you did not believe he had revealed what you told him to the banks, did you not?

A. I did not believe he told the banks anything about it.

Q. How did Scheuch and Schilling receive this news? Did they receive it as something they had not suspected or something they had suspected?

A. They both were thunderstruck, and both broke down. To tell a man that he is in such a fix, why, they were stupified.

Q. Now then, coming back to this question of accommodation bills of lading, I understand you first told Scheuch that you were not using accommodation bills of lading and then when you returned to this country and found that your firm had been using bogus bills of lading you then wrote to Scheuch that you were using accommodation bills of lading?

A. Yes, sir; I simply told him we are using accommodation bills of lading.

Q. Did you do that in order to avoid having him discover they were bogus bills of lading?

A. Why, I just wrote him that because I promised him to let him know, and John Knight had already given them the explanation what an accommodation bill of lading was.

Q. But it was not true you were using accommodation bills of lading?

A. I don't know what you call accommodation bills of lading.

Q. But when you told Mr. Steele what Scheuch had said he asked you what was an accommodation bill of lading, he never heard of it?

A. No, I never heard of it before I got back to this country except in Havre.

Q. Did you consider your bogus bills of lading as

517 accommodation bills of lading?

A. Yes, sir; call them accommodation bills of lading, kites, bogus bills of lading, all come under the same heading. I call them forgeries because as I said the signature of some man is put to the lading and I know of no cotton be-

hind it and all the railroads in this country were back of it, it is irregular, to say the least.

Q. I am going to read a question or two from your examination on October 6th, 1910, before the referee in bankruptcy at Aberdeen, Miss., which has been filed as an affidavit in this case. "Q. You were taking up forgeries and giving them real bills?" "A. Yes, sir. Now, Scheuch and Company asked how can you do it, how can you exchange those bills, and we gave them an explanation, those are accommodation bills. Now, suppose we don't have the cotton in Jackson, the right kind of cotton for the Havre market, but have low grades, why can't we substitute the shipment from some other place? You see, Havre is a market that does not take low grades or tinges." "Q. So you made Scheuch and Company understand that?" "A. Yes, sir. "Q. Don't you think they understood the whole thing as well as you did? The real reason?" "A. No, they had no idea about it." Was that testimony true?

A. Yes, sir; part of it was brought up this morning about this letter of the Societe Generale.

Q. You spoke of keeping the wheel turning, in your direct examination yesterday, by drawing these after you discovered that your firm was using bogus bills of lading. Well, if the crash had not come at the time that it came, did you expect to draw more drafts on forged bills of lading against the banks of Havre?

A. I did not know what the failure was going to
518 bring. I was just as much in the air about that. I was under a constant pressure and I was more than relieved at the time the crash came because the burden was taken off of my shoulders.

Q. But as far as you knew that was the way in which you were going to keep the wheel turning?

A. Until some day I hoped to be able to pull out.

Q. After sufficient deliveries had been made to the Havre banks to give Scheuch and Company new lines of credit you intended to draw on those new lines of credit on forged bills?

A. I don't know what the intentions were, Mr. Blair.

Q. Well, if you had kept on in business that is what you have had to do?

A. It is logical, yet I am unable to say what the future was going to bring. I was about to have a nervous breakdown myself.

Q. That is about the only way you know of by which you could have kept the wheel turning, is it not?

A. That is the only way, to keep on moving things.

Q. You spoke of having received a day or two after the failure of Knight, Yancey and Company, telegrams asking whether you were connected with Knight, Yancey and Company, did you not?

A. Yes, sir.

Q. How did you answer those telegrams?

A. I answered no, because at that time I did not know anything about a power of attorney arrangement. I did not know that John Knight was holding power of attorney for my firm and that Miller was holding power of attorney for Knight, Yancey and Company.

Q. That is the first I ever heard of it?

A. I heard of it when the bankruptcy proceedings were mentioned in the paper.

Q. If you did not know it the public did not
519 know it, did they?

A. Some people knew it, but I did not know it and I never talked to anybody.

Q. Did your customers in Havre know it?

A. Not that I know of.

Q. You received a telegram several days after the Knight, Yancey and Company failure asking whether you were involved?

A. That we were involved by the Knight, Yancey and Company failure?

Q. Yes? Did you receive any inquiry of that kind?

A. I think so.

Q. How did you answer?

A. That we were not involved by the Knight, Yancey and Company failure, if I remember right. I always denied having any connection whatever with Knight, Yancey & Company. That report probably originated from that gossip up in New York.

Q. What gossip in New York?

A. Some report came over the wires that Steele, Miller & Company were connected with Knight, Yancey and Company.

Q. And you denied it as soon as you heard it?

A. I did not deny it publicly. When I got the cable I denied it by cabling, but I did not deny it in the newspapers.

Q. Do you know whether any letters were written to Scheuch and Company at the time the custody bills of lading covering this bogus cotton were forwarded to him?

A. I don't remember.

Q. Have you ever seen any such letters?

A. Why, no; I was not in this country at that time.

Q. I mean the Texas cotton?

A. I believe custody bills of lading were received on some of it before I got back.

Q. The question still applies, whether you ever
520 saw any letters written to Scheuch and Company forwarding custody bills of lading representing what we have been calling the Texas cotton?

A. I don't remember.

A. [Q.] Do you know of your own knowledge what, if any, instructions were given to Scheuch and Company in respect to these particular custody bills of lading?

A. Well, the general verdict would be—

Q. Answer the question and explain afterwards?

A. Yes, sir.

Q. In respect to those particular bills of lading representing the Texas cotton?

A. No, sir.

Q. You did not have any personal knowledge in regard to that?

A. I don't remember.

Q. As I understand your testimony is to the effect that custody bills of lading were sent over to be exchanged for the forged bills of lading because that had been the custom in the past?

A. Well, the custody bills were sent over to take up the bogus bills that were in their possession.

Q. If you were not here at the time that some of the custody bills of lading representing the Texas cotton was forwarded and have never seen any letters to Scheuch on the subject and have no personal knowledge on the subject, how can you state what the instructions were that were given to Scheuch and Company?

A. Because I know the way it was generally done.

Q. That is what I was getting at. You are simply testifying to what was generally done in some cases in the past?

A. Yes, sir; because there was another steamer,
521 not only the Texas, I think the Louisianian, and as to the details of the forwarding of those custody bills of lading and port bills, I don't remember exactly which steamer, and what sort of letters were written.

Q. Now, after this disclosure to Scheuch and Company on your last visit to Havre, I believe you have testified that an arrangement was made whereby a draft was drawn on Paul Chardin for 600 bales. Please state what was the purpose of getting this 600 bales from Paul Chardin?

A. My office in Corinth cabled to send reimbursement for 600 bales to Havre, for which the document had already gone to New York, and there was no way of getting those 600 bales back from New York. The only thing to do was to use our only credit in Havre that was left open with the banking department of Paul Chardin and to draw on them against deliveries.

Q. There was no cotton actually shipped on this draft on Paul Chardin for 600 bales, was there?

A. I don't remember.

Q. Was not Paul Chardin out of pocket and is he not now out of pocket value of 600 bales?

A. He did not get those 600 bales—oh, yes, those are the 600 bales that Scheuch and Company were instructed on April 28th to take up those drafts?

Q. They did not do it?

A. I can't help that. Scheuch and Company were instructed to take up those 600 bales out of Steele, Miller and Company's margin account.

Q. Let me read you what you said in your testimony before the referee in Aberdeen, Miss., on October 6th, which in [is] on file as one of the affidavits of the trustee in this case.:

"Q. Well now, was it on this trip, or was it on the
522 trip in January, that you sold 600 bales more of cotton to Scheuch and Company?" "A. No, we didn't sell them anything. "Q. But they agreed for you to draw with fictitious bill of lading attached?" "A. They gave us reimbursements for 600 bales of cotton." "Q. What bank was that on?" "A. Paul Chardin." "Q. And the draft was drawn with one of those accommodation bills attached?" "A. Yes, sir." "Q. They knew that?" "A. I expect they did." "Q. What time was that?" "A. About the 10th of

[or] 15th of March." "Q. What was the occasion of their making that deal at all?" "A. To satisfy or pacify those Havre banks." "Q. How was that going to pacify them?" "A. It would put cotton before them; this particular transaction was not to fall due until the end of May." "Q. The point I want to understand is, how would that transaction, the fact that they would have Paul Chardin to accept a draft with bills of lading for this cotton; how would that fact have the effect of pacifying the other banks? Would it be on account of their confidence in Chardin's judgment?" "A. No, but it would enable Steele, Miller & Company to put all the cotton they could on ship board, get it across, and tell the other banks, "Here is your cotton." "Q. You mean to say the idea was the proceeds of the 600 bales for which Steele, Miller and Company would draw on Paul Chardin with fictitious bills of lading, would be used to buy cotton, and send forward to meet the cotton that was already due?" "A. The idea was that by giving reimbursements for 600 bales it would help Steele, Miller and Company to get the cotton across that these other banks were kicking about." Did you give such testimony?

A. Yes, sir. What about it?

Q. That testimony was true, was it not?

A. Yes, sir. It was not gone into fully as to all
523 the details. The incident about the documents being already sent to New York was not mentioned.

Q. I will read again from your testimony before the referee on October 6th, 1910, when you were questioned by Mr. Percy as follows: After you had stated your disclosures to Scheuch and Company of the use by your firm or [of] fraudulent bills of lading you were asked and answered the following questions: "Q. Did Scheuch and Schilling insist on drawing freely on the Bremen banks and merchants, and getting money to send cotton on to the others?" "A. No, sir." "Q. But you all drew on Bremen because that was the only place you had open?" "A. No, there was nothing constantly open; the only thing to do in that case was to just keep things moving. You see up to that time Steele, Miller and Company had refrained from doing business like Knight, Yancey and Company did. All the Steele, Miller and Company business was done with banks, not with merchants. Knight, Yancey and Company were doing business with different per-

sons in Havre, Italy, and Liverpool, and Steele, Miller and Company only had done business, up to that time, with Havre French banks. So I cabled Corinth about how matters stood, cabled Corinth about forwarding Havre shipments, told them to sell on the Continent, advised selling on the Continent, there was no other channel left." Do you remember that testimony?

A. Yes, sir.

Q. And then again on the same subject you were asked: "Q. :Was anything said by Schilling or Scheuch about using credit in Bremen to get cotton out as fast as you could?" Didn't you and they discuss how you could handle
524 this situation?" "A. No." "Q. Didn't they make suggestions to you as to how to handle it; didn't you go over that matter pretty fully?" "A. No." Did you testify that?

A. Yes, sir; there were no suggestions to make. We were in Havre too far away from the field of operation, so we could not take any active part in it.

Q. When did you return on that trip?

A. I did not get back to this country until April 21st.

Q. That was the last trip you made?

A. Yes, sir.

Mr. Blair:

I do not believe I have any further questions.

Witness:

I would like to say I think in this morning's deposition in reference to this conversation with Mr. Lysel where you pointed out some deposition taken in Aberdeen and one yesterday. Now, those are distinct propositions. The first proposition is the commercial possibility of taking a through bill of lading and substituting it for a port or custody bill of lading, a thing which used to be possible; at least, I do not think it is any more possible after those failures. And the second proposition is the way Steele, Miller and Company proceeded by taking out a custody bill of lading when the alleged genuine through bill of lading was in the possession of the Havre banks. Now, my conversation with Mr. Lysel referred to proposition No. 1, to this commercial possibility and the advantages of it.

Redirect Examination.

By Mr. Dufour:

Q. Now, let us begin with the cotton of the Societe Generale, the 400 bales which Mr. Blair has examined you about. I understood you to identify the photographs of the
525 four drafts which were shown as being drafts drawn by your firm with the bill of lading and invoice attached and accepted by the Societe Generale?

A. Yes, sir.

Q. By whose instructions did you draw that draft? By the instructions—

A. Of Scheuch and Company.

Q. Did Scheuch and Company give instructions to you to place these marks on this cotton, or did they instruct you to draw for 400 bales for reimbursement against the Societe Generale?

A. Scheuch and Company gave us reimbursement of, I don't know how many bales. That was all.

Q. Then the marks were put on by you to identify the cotton?

A. Yes, sir.

Q. Did you sell any cotton to the Societe Generale?

A. No, sir.

Q. Did you quote any prices to the Societe Generale?

A. No, sir.

Q. Did you send any samples to the Societe Generale?

A. No, sir.

Q. Insofar as Steele, Miller and Company were concerned was there any contract with the Societe Generale for the sale of any particular character of cotton?

A. No, sir.

Q. I ask you to look at these drafts and state what were the times of the shipments contemplated; in other words, whether November and December shipments or January and February shipments. Look at the first draft and state what is customary as to the shipment contemplated on a transaction of that character. What does that draft convey the shipment was?

A. Draft No. 2181, February 8th.

526 Q. That draft contemplates that that cotton was shipped on February 8th?

A. Well, about the 8th.

Q. Does the draft contemplate that the securities attached to the draft evidence the possession of the property by the railroad on that day or previous thereto?

A. Yes, sir.

Q. Look at the other draft?

A. No. 2179, February 8th.

Q. I ask you do the same questions appertain to that draft as to the first one?

A. Yes, sir.

Q. Look at the next draft?

A. No. 2180, February 8th.

Q. I ask you do the same questions appertain to that draft as to the two previous drafts?

A. Yes, sir.

Q. Look at the next draft?

A. No. 2178, February 8th.

Q. Same questions appertain to that draft as to the previous ones?

A. Yes, sir.

Offer:

Mr. Dufour:

In connection with the testimony of the witness, counsel for complainant offers the drafts which have been produced by the solicitor for the Societe Generale, and identifies them as complainant No. ——.

Q. Those drafts I understood you to tell Mr. Blair were accompanied by what purported to be bills of lading which are pronounced as forgeries?

A. Yes, sir.

527 Q. I show you a bill of lading dated Columbus, Miss., 3rd February, 1910, purporting to have received from Steele, Miller and Company shipper's order Havre, France, party to be notified, Scheuch and Company, Havre, France, 100 pressed cotton marked Q R T Y, and ask you—which bill of lading, I will advise you, has been attached to an affidavit of Mr. Blair as having been received from the Societe Generale and I ask you is this the form of the bill of lading which you testified was attached to that draft, I mean whether in that form as far as you know?

A. Yes, sir; in that form; that is the through bill of lading form.

Q. Now, Columbus, Miss., on that bill of lading means where the cotton originated?

A. Yes, sir.

Q. And the Scheuch and Company, party notified, is the Scheuch and Company that have been identified in this case?

A. Yes, sir.

Q. Did I understand you to say that these drafts were each accompanied by an invoice?

A. It was customary to attach an invoice copy.

Q. Invoice to the draft?

A. Yes, sir; invoice copy.

Q. In the absence of an invoice copy where did the original invoice go?

A. That was sent to Scheuch and Company.

Q. That was sent to Scheuch and Company and it was customary to send an invoice copy attached to the draft?

A. Yes, sir.

Q. In whose name was that invoice, the name of the Societe Generale or the name of Scheuch and Company, as the purchaser of the cotton?

528 A. Well, that invoice read, was made out to Scheuch and Company, but not as the purchaser of the cotton.

Q. How was the invoice made out?

A. To Scheuch and Company.

Q. You say, however, it was the custom that an invoice should accompany the draft?

A. Yes, sir.

Call:

Mr. Dufour:

Counsel for complainant calls upon the defendant, the Societe Generale, to produce at such time previous to the close of this cause, the original invoices attached to the drafts identified by the witness.

Q. Now, Mr. Linde, what was you [your] last trip to Havre?

A. I left this country at the end of February.

Q. And when did you return?

A. April 21st.

Q. Previous to that when was your last trip to Havre?

A. End of December and came back beginning of February.

Q. Therefore, you were in this country from the beginning of February to the end of February?

A. Yes, sir.

Q. Between your two trips to Havre?

A. Yes, sir.

Q. Now, you testified concerning certain statements made by you or certain evidence given by you at the hearing before the referee in Aberdeen about certain conversations with Mr. Scheuch. Now, when you returned from Havre were you able to negotiate any further drafts on Havre against reimbursements, other than the transactions of Paul Chardin, which has been discussed here? While you were over there, between the end of February and your return were you able to negotiate the sale of any drafts under the reimbursement conditions?

A. No; there was nothing open but Chardin.

529 A. [Q.] Why?

A. Because we were blocked in Havre.

Q. When you say you were blocked what do you mean?

A. We couldn't get any further credits in Havre except the only thing that was open was Chardin.

Q. For the transaction you refer to?

A. Yes, sir.

Q. Were you pressed for your cotton while you were in Havre?

A. Scheuch began pressing us along in February and that was the reason I went over.

Q. You went to Havre the last time in response to being pressed by Scheuch and Company for you [your] cotton?

A. Yes, sir.

Q. And that is the time you made the statements you testified to at length in response to Mr. Blair's question?

A. Yes, sir.

Q. Now, you returned when, on the morning of the 21st of April I understand?

A. Yes, sir.

Q. To Corinth?

A. Yes, sir.

Q. And you were advised then of the Knight, Yancey and Company failure?

A. Yes, sir.

Q. And you said you started cotton moving—

A. I did not start any cotton moving—

Q. —towards the French banks, I mean towards Scheuch and Company?

A. Yes, sir; some of the cotton was on the way, was down here in New Orleans.

Q. Your firm received from Mr. Hardin port bills of lading that had been exchanged?

A. Yes, sir.

Q. Either through yourself or through Mr.
530 McKnight?

A. Yes, sir.

Q. In the case of Societe Generale why didn't you send these four bills of lading for their 400 bales direct to the Societe Generale?

A. They were never sent direct to the bank.

Q. They were sent to whom?

A. To Scheuch and Company.

Q. For what purpose?

A. To be substituted for the bogus ladings that had in their possession.

Q. Now, did I understand you to say that some time previous you had had transactions of that character. I think I am correct when I say probably the first one was in December?

A. This substitution business?

Q. Yes; probably the first one was in December, the Societe Generale?

A. Yes, sir.

Q. When that first substitution took place did you receive in return the fraudulent bills of lading?

A. Yes, sir.

Q. And whenever a substitution took place thereafter did you receive in return the fraudulent bills of lading?

A. Yes, sir.

Q. Were or were not those instructions to Scheuch to receive and return the bills of lading?

A. That was the general instruction.

Q. And up to this Texas cotton which you know nothing

of because we took charge of your office, had you always received the fraudulent bills of lading in return?

A. Yes, sir; as far as I know at least.

Q. Therefore, would you simply state now, that
531 when you received that custody bill of lading from the steamship in lieu of the bill of lading issued by the carrier which had been sent to Hardin, will you state what was your object and intention in sending that bill of lading to Scheuch and Company and what you had a right from previous experience to think would be done?

A. The object in sending those port bills of lading or custody bills of lading to Scheuch and Company was to substitute these genuine bills for the fraudulent ones held by the banks, to get these fraudulent ones out of the way.

Q. Now, I understood you to testify that at the same time Bremen had fraudulent bills of lading. Well, in April, when you suspended or went into bankruptcy, Bremen had not been overlooked either. You did not overlook Bremen in that transaction did you?

A. This reimbursement of the French banks.

Q. No. Independent transactions. Had you negotiated fraudulent bills of lading in Bremen?

A. On Bremen; yes, sir.

Q. Had you negotiated fraudulent bills of lading on Liverpool?

A. I think there were a few.

Q. Brown and Company, do you recall them?

A. I was not here but I saw the names.

Q. Had you negotiated some fraudulent bills of lading on New York?

A. Yes, sir.

Q. Had you negotiated some fraudulent bills of lading on Spain?

A. I don't think they were on Spain.

Q. On Italy?

A. I think they were on London for some Spaniards account.

Q. Why did you particularly pick out Havre as the point to send all of the available free cotton that you had?

A. Havre was just one point, one spot, on the wheel. As the firm was blocked why Havre had to be made
532 good and then a new shortage was created on

Bremen and on Liverpool and Spain and Italy, and this new shortage would have been filled again later on if it had not been for the fact that the firm was thrown into bankruptcy.

Q. And what was the reason for straining every effort to fill the commitments in Havre, was Havre pressing you?

A. Havre was pressing for their cotton; yes, sir.

Q. Havre had made inquiries concerning you [your] character of doing business; I mean the banks had, to you?

A. I don't know that.

Q. Had not the banks asked Scheuch how you could get two sets of bills of lading?

A. That was not until after January.

Q. I mean previous to March?

A. Yes, sir.

Q. And Scheuch and Company were aware of your condition as you have testified?

A. From the beginning of March.

Q. Now, let us take the 900 bales of cotton of the Comptoir de Mullhouse, you recognize the drafts as presented to you by Mr. Blair?

A. Yes, sir.

Q. Do I understand you to testify that transaction was the same, the same papers and the same evidence would apply except for the difference in marks and amount?

A. Yes, sir.

Offer:

Mr. Dufour:

Counsel for complainant offers, produces and files in evidence the nine drafts shown to the witness by the solicitor for the defendant, identified by the witness as drafts drawn against the Bank of Mullhouse.

Q. Were the invoices attached in the same manner?

A. Invoice copies and insurance certificates, the
533 usual documents were attached.

Call:

Mr. Dufour:

Counsel for complainant calls on solicitor for defendant to

produce at some time previous to the close of this case the original invoices attached to said drafts.

Q. There is no doubt about these bills of lading all being forged?

A. No, sir.

Q. Now, as to the cotton of the Credit Havrais, the same statements apply?

A. Yes, sir.

Q. Now, as to the Comptoir d'Escompte de Mullhouse, the same statements apply?

A. Yes, sir.

Mr. Dufour:

I make the same offer concerning the drafts of these parties and also make the same calls concerning the invoices.

Q. Now, as to the transaction with Mr. Paul Chardin. Did Mr. Paul Chardin purchase this cotton? Did you have any order from Mr. Chardin for the purchase of 1000 bales of cotton?

A. My firm had sold Paul Chardin some cotton, certain amounts of cotton for delivery during practically every month extending all the way through the summer, and this cotton was to be tendered to Paul Chardin by Scheuch and Company.

Q. Was that cotton sold deliverable in Havre?

A. Yes, sir.

Q. To be tendered in Havre?

A. Yes, sir.

Q. Spots in Havre?

A. Spots in Havre.

Q. Therefore, you had no particular orders or contracts for the shipment of any particular cotton to Paul
534 Chardin the cotton merchant?

A. We had a contract. If I remember right, the contract called for good middling, so Steele, Miller and Company had to deliver to Paul Chardin through Scheuch and Company good middling out of this stock in Havre according to instructions from Steele, Miller and Company.

Q. What did you have in addition to that. Did you have an agreement with Scheuch and Company by which they ten-

dered you or gave you the name of Paul Chardin for reimbursement purposes as a banker?

A. As I have said before, all of our shipments to Havre were consigned shipments and the firm had some delivery sales to the Havre branch of Paul Chardin, and in order to let Paul Chardin Banking Department in Paris earn a bank commission, Steele, Miller and Company would draw on Paul Chardin for the equivalent amount of the delivery sales and these transactions were handled just like the consignment of shipments.

Q. Was Paul Chardin compelled to take a thousand bales of cotton supposedly represented by bills of lading attached to this draft, or was this a banking contract as against a contract with you of a right to purchase from your stock in Havre a certain number of bales a month?

A. Paul Chardin, Paris was used as a bank.

Q. Let me ask you another question: Did Paul Chardin, Paris, accept these drafts?

A. Yes, sir.

Q. Did he receive the usual bank commission for these drafts?

A. Yes, sir.

Q. Now, let us assume that on or about this
535 time, part of your delivery, under your contract with Paul Chardin, was due. You had not been paid in anticipation had you?

A. Against this delivery contract?

Q. Yes?

A. No, sir.

Q. You had not been paid a cent in anticipation?

A. No. It would have been contrary to the custom of the Havre market. They make payments on the delivery of the cotton.

Q. Chardin paid when the actual cotton was delivered in Havre?

A. Yes, sir.

Q. Out of that stock?

A. Out of that stock.

Q. Out of his pick?

A. Exactly.

Q. Which was what kind of cotton?

A. Cotton re-classed in Havre and tendered by Scheuch and Company.

Q. What was the character of it?

A. Consigned cotton.

Q. No; but what grade?

A. I think it was good middling that the contract called for.

Q. And this transaction on the other hand represented a reimbursement with documents attached for which he received a banker's commission and for which he was treated as a banker?

A. Yes, sir.

Q. That is the situation?

A. Yes, sir.

Q. In whose name was the invoice made out that accompanied the Paul Chardin drafts?

A. Scheuch and Company's name.

Q. Mr. Blair showed you a document that you called a memorandum?

A. Yes, sir.

536 Q. You identified that as a document which emanated from your office?

A. Yes, sir; a memorandum. It has no commercial value.

Q. It is something that passed between you and Scheuch?

A. Yes, sir, a memorandum.

Q. I say something that passed between you and Scheuch?

A. Yes, sir.

Q. And you recognize the signature to that document?

A. Yes, sir.

Offer:

Mr. Dufour:

Counsel for complainant offers the photograph of the document shown to the witness by the solicitor for defendant Paul Chardin marked Exhibit ———.

Q. Do you recall the bankers commission that was charged on that?

A. I think in the Paul Chardin case it was 3/16.

Q. Was that cotton hedged by futures as well as other cotton?

A. Yes, sir.

Q. Through whom?

A. Through Scheuch and Company.

Q. They hedged that cotton for futures as well as other cotton?

A. Yes, sir.

Q. There is no mistake about your statement of your contract with Chardin for the delivery of cotton, was to tender him a certain number of bales on spot in Havre subject to reclassification and payment on the spot?

A. To cover that transaction Paul Chardin was given a contract signed by Scheuch & Company.

Q. Did you have a contract with him?

A. No. Scheuch and Company acted as agent. This is a memorandum to Scheuch and Company of a consignment on Chardin in Paris containing a number—

Q. Do you know whether that contract is in existence?

A. I say that is a photograph of it. I recognize
537 it as a memorandum.

Q. Is this the contract you have reference to that Mr. Blair showed you?

A. It is not a contract.

Q. Is this the document you are testifying about?

A. It is not a document.

Q. It is the memorandum?

A. It is a memorandum notification to Scheuch and Company giving Scheuch and Company the cypher for this consignment cypher GEOF.

Q. What is the meaning of that cypher?

A. You find that cypher in the shipping book identification for consignment shipments, and futures were sold against this consignment. It became a spot sale. That is why the sale is left open up there.

Q. In other words, this was a consignment sale against which drafts were drawn against Paul Chardin?

A. Yes, sir; and against which futures were sold.

Q. Did you draw very often on Paul Chardin among others?

A. Yes, sir; we had a good many transactions with Paul Chardin.

Q. Were the transaction in excess of much in excess of

the cotton which you had contracted to deliver him on spot in Havre?

A. No. For each delivery contract we were even asked to draw for the equivalent amount on their Paris branch.

Q. They asked you to draw for the equivalent amount of the documents attached?

A. Yes, sir; Scheuch and Company suggested though to let Chardin earn this bank commission.

Q. But your real contract with them was for
538 your payment on spot subject to Havre tender?

A. Subject to the rules of the Havre market.

Q. You identified the invoices shown you in connection with the drafts on Paul Chardin did you not?

A. Yes, sir.

Q. Now, attached to those invoices appear what purport to be duplicate insurance certificates on cotton and on the reverse thereof is this note: Passe a l'ordre de Paul Chardin, Steele, Miller and Company. You recognize the signature of Steele, Miller and Company?

A. Yes, sir. That is Steele, Miller and Company's signature, but this stuff was added later.

Q. In other words, this insurance certificate is made negotiable by the indorsement of Steele, Miller and Company?

A. Yes, sir.

Q. And the custom of the trade recognizes the right of putting in the name of any party who holds the document?

A. Yes, sir.

Q. Do you recognize the form of that certificate as being the general form used by you?

A. Yes, sir.

Q. And all this cotton which went to the Societe Generale, the Banque de Mullhouse, the Comptoir d'Escompte de Mullhouse, the Credit Havrais and Paul Chardin was all covered by certificates of the same character as that except for the difference in the cotton?

Q. Yes, sir.

Call:

Mr. Dufour:

Counsel for complainant calls upon solicitor for defendant to produce previous to the close of this cause any and all

insurance certificates attached to the drafts or invoices that are in the possession of the defendants.

539 Q. Do you recall whether or not those insurance certificates provided for through shipments. They identify the bill of lading, do they not?

A. No, sir.

Q. And the railroads?

A. No, sir.

Q. I ask you to look at an insurance certificate purporting to be issued by the Insurance Company of North America, No. 382183, and ask you if this insurance certificate shows where the cotton supposed to be covered by it originated, but [by] what railroad it was brought to the port and by what line it is presumed to be transferred to Europe?

A. This insurance certificate purports to cover a lot of cotton marked R T H F, 100 bales, originating from Winona, Miss., by the Southern Railway and the French Line and any other line to Havre.

Q. Therefore, the insurance certificate does show the point where the cotton originated and the railroad by which it is to go, and does show whether or not it is on a through bill of lading or not?

A. No. It does not necessarily show it was on a through bill of lading. Suppose a through bill of lading had been substituted for a custody bill of lading.

Q. I am saying what this presumes to show?

A. The origin of the cotton.

Q. And the railroad by which it is presumed to have come to the port to the port and the line, giving the railroad the right to change the line of steamers?

A. Yes, sir.

Q. And all of the insurance certificates are made that way?

A. Yes, sir.

Q. Were there any insurance certificates attached to the bills of lading at the time that the custody bills of

540 lading were taken out and forwarded to France?

A. No, sir.

Q. Did you accompany them with any insurance certificates?

A. No. That cotton was covered—

Q. By previous—

A. By previous insurance certificate.

Q. But there was no—I don't want you to draw any conclusion of law. I am not asking you that way. I mean were there any insurance certificates or policies taken out in favor of the holder of the custody bills of lading at the time that the custody bill of lading was secured by you.

A. No, sir.

Q. Then, unless the cotton was covered by the form of certificate which accompanied the draft, there was no independent contract of insurance?

A. I don't know.

Q. I distinctly don't want you to draw any conclusion. I want you to discuss the physical fact. I dont want you to say whether it was covered or no [not] covered. That is a matter we wont discuss. But I am asking you whether there was any independent contract of insurance. Did you insure that cotton under that custody bill of lading at the time the custody bill of lading was secured by you and it [if] you did did you send the insurance policies to Havre with the bill of lading?

A. There was no insurance certificate taken out.

Q. Was the insurance company notified?

A. Yes, sir.

Q. Were the banks notified that the insurance companies had been notified?

A. No, sir.

Q. Therefore, you did not communicate with anybody that no new insurance certificates had been taken
541 out?

A. Yes, sir; we communicated with the insurance company.

Q. To what effect?

A. Notifying them that such and such a certificate was loaded on such and such steamer.

Q. You notified them that such and such cotton represented by such and such certificate was loaded on such and such steamer?

A. Yes, sir.

Q. But did you communicate to the insurance company that the throu- [through] shipment had been changed and the cotton was moving under a custody or port bill of lading?

A. That the insurance company had nothing to do with.

Q. I don't want you to go into legal deductions about it.

All I want to know is what happened. Did you notify the insurance company to that effect, if you did so say so?

A. No, sir.

Q. You simply notified them, for instance, in the case of the Societe Generale, such and such cotton had been loaded aboard such and such steamer?

A. Yes, sir.

Q. And as far as they were concerned they knew nothing else?

A. No, sir.

Q. When that cotton was sold in Havre, whether it was sold to Scheuch and Company or to any one else, was the cotton sold on sample, such sales as you made?

A. Out of consignment shipments?

Q. Any kind of shipments. Was it sold by cable and by grade?

A. There were so many different transactions I can't answer your question off hand. I [if] you want to ask me questions on consignment shipments those were the shipments in question.

Q. Let us take the consignment shipments?

A. Consignment shipments would be re-sampled at Havre and re-classed by a sworn broker if this cotton was placed on the market for sale, or it would be re-classed by
542 Scheuch and Company's classer and put together in lots and tendered against delivery sales such as were made to Paul Chardin.

Q. Then when the cotton reached Europe for the purposes of its sale it had to be re-classed through either Scheuch and Company or through a public classer or through a classer satisfactory?

A. Consignment shipments.

Q. Did you have any authority from the holders of the bill of lading and the acceptors of the draft to in any way change or modify or substitute any cotton at a subsequent time for such cotton as they believed they had?

A. No, sir.

Q. In other words, let us take the concrete case of the Societe Generale wherein you drew on them for reimbursement against 100 bales of cotton Q R T Y. Do I understand you to say that that reimbursement was given on the theory that all documents accompanied the draft?

A. Yes, sir.

Q. Did you have any authority to at any time at a subsequent date substitute other cotton in lieu of that cotton, did you have any agreement or any instruction or any consent?

A. By the Societe Generale?

Q. Yes, as the acceptor of the draft?

A. No, sir.

Q. Does that apply to the three other drafts of the Societe Generale?

A. Yes, sir.

Q. Does that apply to the drafts of the Banque de Mullhouse, where the Banque de Mullhouse was the acceptor?

A. Yes, sir.

Q. Does that apply to the transaction where the Comptoir d'Escompte de Mullhouse was the acceptor?

543 A. Yes, sir.

Q. Does that apply to the transaction where the Credit Havrais was the acceptor?

A. Yes, sir.

Q. Does that apply to the transaction where Paul Chardin was the acceptor?

A. Yes, sir.

Q. In other words, insofar as your authority existed, there was no discretion beyond the right to draw for reimbursement when accompanied by documents which they believed were valid?

A. Yes, sir.

Q. And these bills of lading to be accompanied by the customary documents in the trade like insurance policies—

A. You mean those drafts?

Q. Yes, these drafts to be accompanied by the customary documents in the trade?

A. Yes, sir.

Q. Mr. Scheuch in his testimony before the referee was asked this question: "Q. Well, now what was the necessity of mailing you these documents on April 13th if you had already accepted drafts to which were attached bills of lading and all documents necessary?' To which replied: "A. I will tell you why. When one of the firm was over in Havre he told us it would be sometimes necessary to exchange the bills of lading and that it would be in our interest to rush forward the cotton." Do you remember that statement, and

if so, did you make it at the time that you say you had other conversations with Scheuch?

Q. That point was referred to already when this matter first came up with the Societe Generale, when I explained to them about substituting shipments from one point to shipments from another point, on account of the grade
544 not being at hand, and of course this proposition of getting cotton rushed through, getting a guarantee of sailing by obtaining a custody bill of lading, those things were discussed already in that letter in January.

Q. Did I understand you to say who opened the credits with the banks?

A. In Havre, Scheuch and Company.

Q. Now, explain what you understand by an angagement d'importation?

A. I understand an engagement d'importation to mean the option given to a cotton merchant to use the banks name for reimbursement purposes for a given amount of cotton.

Q. To be on what conditions, the bank to require what security?

A. The usual trade documents and margin according to arrangements with the merchant.

Q. Outside of the large merchants, or including the large merchants, is business done upon that basis. In other words, is it not practically a prerequisite that in the shipment of cotton a bank reimbursement should be provided?

A. Yes, sir; the cotton business could not be done without it.

Q. Is the bank's reimbursement or reimbursement of such financial character, sufficient?

A. Yes, sir.

Q. What did you do with the bills of lading that were returned to you by Scheuch and Company, the railroad bills?

A. I think they were destroyed.

Q. Just as Mr. Blair and I were coming back you stated to me you wanted to make some character of statement concerning the Paul Chardin transaction. You have got a right to make it if you want to make it, and I will say to you before I turn you back to Mr. Blair, I say to you it is your privilege to make any statement you desire concerning that transaction.

A. These Paul Chardin transactions have been referred

to on several occasions, and I wish to add that in
545 some cases Chardin would keep one of those shipments if Scheuch and Company were thus instructed by Steele, Miller and Company. This would simplify the transactions and reduce them to merely making a few entries on their books. In other words, Scheuch and Company would be charged up with the acceptance of Steele, Miller and Company's consignments and all the costs thereon and be given credit for the amount of the invoice covering the cotton tendered against delivery. It also would not be necessary in such cases for Scheuch and Company to re-class such lots or to have them resampled even. A few transactions have been made along these lines, but they were exceptional, for the simple reason that the delivery contract to Chardin called for a certain grade and as the turn out of the consignment shipments was more or less irregular, sometimes better, sometimes not so good, as described, sometimes a better staple even Chardin might not have been able to use the cotton for his intended purpose.

By Mr. Blair:

Q. Was Chardin one of the banks that Scheuch and Company had a general reimbursement credit for ordinary consignments, or was he used only in connection with cotton in which he was interested?

A. I don't know whether the banking department of Paul Chardin did any business outside, except for account of their Havre branch, to finance the transaction of the Havre branch.

Q. That was the only connection you had with them?

A. As far as I know that is the only connection we had with them.

Q. A man who has an engagement d'importation with a bank is a responsible to that bank is he not?

546 A. Why certainly.

Q. For the drafts drawn under that engagement?

A. Yes, sir.

Q. Now, when you say that you could draw no more drafts or were blocked at Havre in the latter part of March, was not that because the drafts already drawn had exhausted the engagement d'importation of Scheuch and Company with those banks?

A. I expect so, at least Scheuch and Company said in February, they already said they were unable to get any further credits.

Q. Because he had already drawn to the full limit?

A. I expect so.

Q. And those credits would in the ordinary course be opened again after the cotton float and drawn against had been delivered?

A. Yes, sir; I expect so.

Q. And the wheel was blocked simply because the Havre banks had be [been] drawn upon to the full limit to which they had agreed to be drawn?

A. According to the information of Scheuch and Company. That is the only thing I can go by.

Q. You have no reason to believe that Scheuch and Company's information to you was not true in that respect have you?

A. No, sir; I have no reason to believe that.

Q. And when you made the shipments to Havre which you made, including the Texas shipments, those drafts were the oldest drafts out, the Havre drafts, were they not?

A. I am unable to say whether they were the oldest drafts or not.

Q. Wasn't it about Havre's time in the course
547 of the turning of the wheel, to get the cotton?

A. Yes, sir.

Q. You spoke in answer to Mr. Dufour's question, you said you had no specific authority to substitute cotton. Do you consider you required special authority to ship cotton to answer the draft which you had drawn when you had failed to ship the cotton on the date of the draft?

Objection.

Mr. Dufour:

Objected to as calling for a legal conclusion from the witness not being justified by the examination in chief.

A. I do think I needed any authority.

June 22, 1911.

CHARLES JANVIER, witness sworn and examined on behalf of complainant, testified as follows:

Direct Examination.

By Mr. Dufour:

Q. What is your name?

A. Charles Janvier.

Q. What is your business?

A. I am vice-president of the Canal-Louisiana Bank and Trust Co. and also president of the Sun Insurance Company of New Orleans.

Q. How long have you been connected with the Canal-Louisiana Bank and Trust Co.?

A. Since 1894 with the Canal Bank and then since 1905 with the Canal-Louisiana Bank and Trust Co.

548 Q. You said you were connected with the Canal Bank since 1894. Did you ever hold any official position in that bank?

A. I held the office of vice president of that bank from 1902 or 1903 when Mr. Morris retired and Mr. Edward Toby became president.

Q. Subsequently did you ever become president of that bank?

A. Yes, sir; of the Canal Bank from the death of Mr. Toby.

Q. Was the Canal Bank engaged in the general banking business?

A. Yes, sir.

Q. Was and is the Canal-Louisiana Bank and Trust Company engaged in general banking business?

A. Yes, sir.

Q. Does any part of the business of the Canal-Louisiana Bank and Trust Company consist in buying and selling foreign exchange?

A. Yes, sir.

Q. Are you acquainted with the method in which foreign exchange, based upon cotton is bought and sold?

A. Yes, sir.

Q. What accompanies the foreign exchange when it is a draft?

A. If it is exchange drawn against a shipment of cotton the draft is accompanied by bills of lading to the cotton and also by the insurance certificates, insurance policies on the cotton or whatever would be the merchandise against which the exchange is drawn.

Q. I ask you this question for an opinion as a prudent business man. It has been testified to here in the evidence of certain officers of certain French banks and the representatives of certain French banks, that at certain times in the year 1910, the latter part of 1909 possibly, they were the holders of through bills of lading purporting to have been issued by a railroad corporation for the transmission of cotton from some point, say Memphis, Tennessee, to Havre
549 via the French Line. These bills of lading came into their possession by virtue of the acceptance of a draft under the engagement d'importation. At a subsequent period the party to whom they accepted the draft presented to them custody or port bills of lading issued by the steamship company for the same cotton and for the same marks and asked that these be exchanged for the through bills of lading. Now, I ask you how that would impress a prudent and reasonable business man and banker?

Objection.

Mr. Blair:

Objected to on the ground of irrelevancy and on the further ground that it is incompetent evidence and on the further ground that this is a matter for the Court to pass upon after the facts have been proved, and not a matter for an expression of opinion by the witness.

A. Well, Mr. Dufour, if I were placed in the position of that French banker and had presented to me other evidences of title in the property to which I thought I had held the only evidence of title, the original bill of lading, or the through bill of lading, I would consider the matter one that required an investigation at least. If I held the through bill of lading I would imagine that nobody else could get that cotton except upon, upon the surrender of the document I held in my possession.

Q. Would you consider it one which would require a thorough investigation?

A. Oh, yes, indeed—

Q. Or a mere inquiry of the party?

A. —because it would put my possession of this property in doubt. If I held the only thing the property could be gotten possession of, and I found somebody else had
550 gotten possession as evidenced by the second set of bills of lading, I would certainly investigate how that could be.

Q. Would consider the explanation of the party who tendered you the bill of lading sufficient?

It is understood that the same objection is made to this testimony as has heretofore been made to similar testimony.

A. No, sir. I would institute an inquiry of my own.

Q. Would it be possible to carry on banking business and exchange business if it was possible for two evidences of title to issue at the same time?

A. No. It would be extremely unsafe. We would never know exactly where we stood. If we bought a bill of exchange with bills of lading attached to that exchange and not be sure those bills of lading really represented the property, and the property could not be had except through those bills, of course we would not want to buy the exchange.

Q. Are you aware of any differences in other places and other points in the banking world by which this condition exists or could exists?

A. I do not.

Q. Your bank deals extensively in—

A. Yes, sir, our bank buys exchange in New Orleans. Of course the situation you are putting to me, the situation in which a bank on the other side finds itself, the acceptor of the draft—

Q. I ask you if you dealt extensively in buying and selling foreign exchange?

A. Yes, sir.

Q. Would or not such an offer—

A. It would suggest something extremely
551 irregular.

Q. It is not the customary or ordinary method of doing business?

A. Oh, no; I do not think so, I do not see how it could be conducted.

Cross-Examination.

By Mr. Blair:

Q. Have you ever done banking business outside of New Orleans?

A. No, sir.

Q. I understand from your testimony that the bank which has accepted the draft which describes the cotton which also has a negotiable bill of lading attached thereto, considers itself as having the title to that property and full possession and dominion over it?

A. Yes, sir. They have the title to that cotton and that is security for the draft they accept.

Q. It considers it has full possession and dominion over that cotton?

A. I imagine so, yes, otherwise there would be very little security.

By Mr. Dufour:

Q. That bill of lading is given for the purpose of security for the draft?

A. For the purpose of securing the draft and having the draft negotiated so that the money may be realized on the draft at this end of the line.

Q. And in order to claim the cotton when it arrives?

A. Yes, sir; so they can get a security for the money advanced.

552 THOMAS HALFORD, witness sworn and examined on behalf of complainant, testified as follows:

Direct Examination.

By Mr. Dufour:

Q. What is your name?

A. Thomas Halford.

Q. What is your business?

A. I am now in the future cotton business.

Q. Were you even engaged in the spot business?

A. Yes, sir.

Q. Are you an American citizen?

A. No, sir.

Q. You reside here now?

A. Yes, sir; I reside here now, but I am not an American citizen.

Q. Did you ever reside in Liverpool?

A. Yes, sir; I was born there.

Q. How many years did you reside there?

A. Twenty-seven years. Of course, I still reside there in a sense; I am still a citizen of Liverpool.

Q. How long have you been in this country?

A. Since 1889.

Q. Have you been a frequent visitor to Liverpool since you came to this country?

A. Yes, sir.

Q. Do you represent here a Liverpool house?

A. Yes, sir.

Q. I show you a paper called the Liverpool Daily Post and Mercury, which paper is attached to an affidavit filed by me in this case, and I ask you if you recognize this paper and if this is a paper published in Liverpool and a paper of general circulation there?

A. Yes, sir. (Witness examines paper handed
553 him by counsel.)

The Daily Post was the biggest paper there and they added the Mercury.

Q. You recognize this?

A. Yes, sir.

Offer:

Mr. Dufour:

In connection with the testimony of the witness counsel for complainant offers, produces and files in evidence copy of the Liverpool Daily Post and Mercury of date Wednesday, April 22, 1910, filed in these causes under the Number 14,240, and attached to the affidavit of William C. Dufour, and counsel offers particularly the article headed "Cotton Market Outlook," appearing in the 7th column of page 7.

It is understood in connection with this offer that in the event of an appeal the article in question will be cut from the file and copied singly in the record.

Objection.

Mr. Blair:

To which offer counsel objects on the ground that the evidence is irrelevant and also incompetent to establish any issue in this case.

EDWARD S. BUTLER, witness sworn and examined on behalf of complainant, testified as follows:

Admission—In connection with the testimony of Mr. Butler it is admitted that the witness would identify the newspaper shown Mr. Halford and his testimony would be the same as that of Mr. Halford concerning its being a newspaper of general circulation in Liverpool.

Q. What is your business?

A. I am the New Orleans manager for Minoprio Fogan and Company of

Q. How long have you been connected with

554 Minoprio, Fogan & Co.?

A. Since 1903.

Q. Would it be an indiscreet question, if it is I will withdraw it, to ask you if Minoprio, Fogan & Co. are large shippers of cotton?

A. It is not indiscreet. I am quite willing to admit that. We are very large shippers of cotton.

Q. From this port?

A. Yes, sir.

Q. To what ports?

A. Well, to every foreign port and American business as well, Eastern and Southern business as well.

Q. Do I understand that you are their agent in this port, represent them?

A. Yes, sir.

Q. Do you buy and sell cotton, for them, buy and sell exchange?

A. Yes, sir; everything.

Q. Are you familiar with the method of selling exchange on cotton as the basis?

A. Yes, sir. In New Orleans it is sold direct to the banks, and it is sold throughout the country through exchange brokers in New York and others points, Chicago, St. Louis and elsewhere.

Q. When you say that it is sold direct to the banks, what do you mean?

A. We go to the banks and give them a draft and they send it to New York.

Q. What accompanies that draft?

A. Bill of lading and insurance certificate and sometimes an invoice, not necessarily the latter.

Q. Have you ever heard of any circumstance of condition by which both the through bill of lading accompanying the draft and in the hands of the acceptor of the draft and a port bill of lading for the same cotton could be out at the
555 same time?

Objection.

Mr. Blair:

Objected to as irrelevant and incompetent testimony.

It is understood the same objection shall apply to similar testimony.

A. Yes, sir; in the case of Knight, Yancey & Co. and Steele, Miller & Co.

Q. I mean in the ordinary course of business?

A. Otherwise. No, I never heard of any recognized firm issuing them.

Q. Supposing a man in the cotton business should come to you as the holder of a through bill of lading for cotton of certain marks and presented you a bill of lading for the same cotton, same marks, and ask you to exchange a port bill of lading for the through bill of lading, what would that suggest to you?

A. That was done here by the steamship companies, up to very recently, they did exchange through bills for port bills.

Q. I am not talking about exchange. I am talking about—

A. I dont quite catch your question.

Q. It has been testified in the affidavits in this case that certain French banks held certain through bills of lading in their possession which had come into their possession by virtue of accepting drafts. At a subsequent time and without any explanation, port bills of lading for the same cotton were handed to them and they were asked to accept?

A. It would appear to me there were two sets of documents out for the same shipment, and that one or the other must be fraudulent.

Q. Would it be possible to carry on business that way?

A. Business was carried on by Knight, Yancey
556 and Company that way until the failure of Knight, Yancey and Company and Steele, Miller and Company.

Q. I am asking you would be it possible for the exchange business to be carried on that way unless it was based on a fraud?

A. Why, no, certainly not.

Q. That is what I mean?

A. Certainly not.

Q. In other words, where you purchase through bills of lading and forward them to Europe, if it was customary or ordinary that other bills of lading for the same cotton could be issued?

A. Certainly not, we certainly could not.

Q. Would it suggest an irregularity or fraud?

A. Indeed it would, there is no doubt about it.

Q. What would it suggest?

A. Why, it would suggest a fraudulent business on its face, two sets of documents being out for the one shipment.

Q. And would a prudent business man be satisfied with receiving a statement from a man that he had fixed it up with the railroad?

A. I should not think so. I would investigate it myself if I was the acceptor of the documents.

E. D. NICHOLSON, witness sworn and examined on behalf of complainant, testified as follows:

It is admitted that if Mr. Nicholson was placed on the stand he would testify concerning the Liverpool paper to the same effect as Mr. Halford.

557 Mr. Dufour:

When Mr. J. D. Hardin, Jr., was upon the stand he was handed a memorandum and requested to insert thereon the dates of the domestic railroad bills of lading received by him and on which he procured the port bills of lading covering the cotton involved in this suit. Counsel for complainant now offers, produces and files in connection with the testimony of the witness the said Loading Record, marked Hardin-1.

Mr. Dufour:

At the time that Mr. W. H. Hendren was upon the stand he read into the record certain cablegrams of which he was asked to make copies. Counsel for complainant now offers, produces and files in connection with the testimony of the witness the copies of the cablegrams produced by the witness.

Mr. Blair:

Counsel repeats the objection heretofore made that the same is irrelevant and res inter alios acta.

Mr. Dufour:

Counsel for complainant now offers the record in the bankruptcy proceeding in the suit No. 123, entitled Knoop, Fanarius & Company vs. Steele, Miller and Company in the U. S. District Court for the Northern District of Mississippi, and particularly the petition for adjudication in involuntary bankrutcy, the certificate of the clerk showing the date of filing thereof and the orders of the Court in the premises. The appointment of J. A. E. Pyle as temporary receiver and the bond of J. A. E. Pyle as temporary receiver. The order of reference to John W. Davis, referee in bankruptcy, the adjudication in bankruptcy by the said John W. Davis. The certificate of the said John W. Davis, referee in bank-

558 ruptcy, showing the election of the trustee, the bond of said trustee together with the certificate of the

Clerk of the District Court of the United States for the Northern District of Mississippi, showing that John W. Davis was at the time of the said proceedings the referee of said court in bankruptcy, and is now the referee of the said court in bankruptcy.

It is understood that counsel will procure and file all the documents above referred to in this offer.

Mr. Dufour:

Counsel for complainant offers, produces and files in evidence the following documents in the suit of S. Cohn et al. vs. C. L. Steele, in the Circuit Court of the United States of the Northern District of Mississippi, particularly the petition filed therein, the certificate of the Clerk showing date of said filing, the order of Court on the 27th day of April, 1910, together with the order of Court rendered on the 2nd day of May, 1910.

Mr. Blair:

To which offer counsel for defendant banks objects on the ground that the same is irrelevant to any issue in the case, is incompetent evidence as against the defendants represented by him and is res inter alios acta.

It is agreed that the documents herein referred to shall be produced at a later time previous to the close of the defendant's testimony.

It is agreed that if Mr. J. A. E. Pyle the trustee were present he would testify he was the same J. A. E. Pyle that was temporary receiver and is now trustee of Steele, Miller & Company and the individual members of said firm bankrupts that he is a citizen of the State of Mississippi,
559 that he is in possession of the asests of Steele, Miller & Company and the individual members of said firm, bankrupts, and that said assets, including this and other suits, if collected, would not be sufficient to pay the debts of said firm or said individual members.

Complainant closes.

560 CABLES OFFERED IN CONNECTION WITH TESTIMONY OF W. H. HENDREN, MARKED EXHIBIT NO. 11.

Filed November 20th, 1911.

United States District Court, Eastern District of Louisiana.

J. A. E. Pyle, Trustee,
vs. No. 14,240
Texas Transport & Terminal Company, et als.

Copies of Telegrams Received by The Texas Transport & Terminal Co., Inc., from Ducrot, Havre.

New Orleans, La., April 25th, 1910.

Cables
Si
Avez
Recu
Rar
Steele
Miller
Balles
Coton
Rlto
Rwta
Rmen
Rkng
Rzya
Rgca
Sur
Quel
Vaviro
Chargees
Cables
If
You have
Received
From
Bales

Cotton
Upon
What
Steamer
Loaded

561 COPY OF TELEGRAM SENT BY THE TEXAS TRANSPORT & TERMINAL CO., INC.

New Orleans, La., April 25th, 1910.

Ducrot, Havre:
Rlto
Rmen
Rkng
'Louisiana
Rnta
Raya
Rgca
Texas
Terminal

562 COPY OF TELEGRAM SENT BY THE TEXAS TRANSPORT AND TERMINAL CO. INC.

New Orleans, La., April 26yh, [26th] 1910.

Ducrot.
Havre:
Referring,
Cable
Monday
You
Hold
Landings
Cable
If
Interior
Or
Port.
Terminal.

563 COPIES OF TELEGRAMS RECEIVED BY THE TEXAS TRANSPORT & TERMINAL CO., INC.

From Ducrot, Havre.

New Orleans, La., April 27th, 1910.

Connaissements
Interieur
Cables
Renseigments
Si
Possible
Expediez
600
Balles
Louisiane
Bills of Lading
Interior
Cable
Information
If
Possible
Ship
600
Bales

Louisiane.

564 COPY OF TELEGRAM SENT BY THE TEXAS TRANSPORT & TERMINAL CO., INC.

New Orleans, La., April 27, 1910.

Ducrot,
Havre.
Cotton
Referred
To
Our
Cable
Monday
Delivered

Us
Locally
By
Shepard Cotton Co.
And
Steamer
Ladings
Issued
No
Interior
Lading
Cover
This
Cotton
Steele
Miller
Have
Surrendered
Steamer
Ladings
To
Shepard
To whom we will
Issue ladings
In exchange.
Terminal

565 Havre, Apl. 30/10.

Terminal,
New Orleans, La.

Referring cables exchanged Monday how many bales shipped Louisiane cable when balance shipped.

566 COPY OF TELEGRAM SENT BY THE TEXAS TRANSPORT & TERMINAL CO., INC.

New Orleans, La., April 30th, 1910.

Ducrot, Havre.

Shepard surrendered our ladings cotton mentioned Monday's cable. Retaining cotton here.

567 United States District Court, Eastern District of Louisiana, New Orleans Division.

J. A. E. Pyle, Trustee,
vs. No. 14,240.
Texas Transport & Terminal Company, et als.

Copies of the Havre Bulletin of date April 27, 1910, and April 28, 1910, being exhibits attached to an affidavit of Wm. C. Dufour, offered in connection with the testimony of Bernard Dessommes and Henry E. Bory, on behalf of complainant, and made Exhibit "15."

Note: Copied into this transcript, beginning at page 47 thereof.

LOADING RECORD.

Exhibit Marked No. 10 Offered in Connection with the Testimony of J. D. Hardin.

Filed November 20th., 1911.

United States District Court Eastern District of Louisiana.

J. A. E. Pyle, Trustee,

vs

No. 14240

Texas Transport & Terminal Company, et als.

LOADING RECORD.

Memo. of Shipments Loaded on French Line.

S/S Texas For Havre Sailed

CONTRACT Steamship	Railroad	Shipper	B/L Reference		MARK	No. B/C	M/R For'd
Bank of Mulhouse	Southern	Local B/L	Memphis	4/6	R D H O	100	
	"	"	"	4/8	R N A M	100	
	"	"	"	4/8	R M B E	100	
	"	"	"	4/8	R N O I	100	
	"	"	"	4/6	R D A K	100	
	"	"	"	4/6	Q A A R	100	
	"	"	"	4/8	R D H F	100	

"	"	"	4/8	R D G B	100
"	"	"	4/8	R B X K	100
"	"	"	4/8	R M U I	100
"	"	"	4/6	R J K S	100
"	"	"	4/8	R I N O	100
M & O	"	Macon	4/6	S R U I	100
I C	"	Holly Spgs.	4/5	R B T R	100
M J & K C	"	Philadelphia	4/11	R U R A	100
"	"	"	4/11	Q A C R	100
"	"	"	4/11	R D A R	100
Southern	"	Memphis	4/6	R D T N	100
"	"	"	4/6	R B S A	100
"	"	"	4/8	R S U O	96
"	"	"	4/8	R T P N	98
M & O	Through B/L	Columbus	2/3 79	Q P L H	100
"	"	"	2/3 80	R D F E	100
"	"	"	2/3 81	Q R T Y	100
"	"	"	2/1 82	Q N T A	100

Brokerage Bill Rendered.....for.....B/C—$.....
Hardin 1.

569 LETTER FROM SCHEUCH & COMPANY, DATED JANUARY 20, 1910.

Exhibit Marked No. 1.

Filed November 20th, 1911.

Offered by Complainant in Connection with Testimony of C. H. G. Linde.

United States District Court, Eastern District of Louisiana.

J. A. E. Pyle, Trustee,
vs. No. 14240.
Texas Transport & Terminal Co., et al.

Memorandum. Telephone 9, 12.

de SCHEUCH & Co.
25, Rue de la Bourse.

Havre le 28 Jan., 1910.

A Messrs. Steele, Miller & Co.,
Corinth (Miss.)

Please note that the following lots have been delivered to Paul Chardin against January Delivery—contracts: dated;

29 May.	4 June 363	Juillet 24		Juillet 30	Augst. 12
L 6	E 8	E 9		E 10	E 15
200	200	200		200	400
	s/o "Euston"	R I N A	98B	Ciplu Hyatt.	
		R W M V	98 "	"	
		R O V D	100 "	"	
		R E L E	100 "	"	
		R S E X	99 "	"	
		R J L K	100 "	"	
		R G A B	100 "	"	
		R S K N	100 "	"	
		R A G S	100 "	"	
		R O U V	100 "	"	
		R U F C	100 "	"	
		R B Z X	99 "	"	
		R I N P	6 "	"	
1199 Hyatt			1200B		

Yours very truly,
(Signed) SCHEUCH & Co.

LETTER FROM SCHEUCH & COMPANY, DATED FEBRUARY 26, 1910.

Exhibit Marked No. 2.

Filed November 20th, 1911.

Offered by Complainant in Connection with Testimony of C. H. G. Linde.

United States District Court, Eastern District of Louisiana.

J. A. E. Pyle, Trustee,

vs.

Texas Transport & Terminal Co., et als. No. 14240

SCHEUCH & Co. 2
Adresse Telegraphique:
Scheuch-Havre.
Telephone 912.

Ferd. Scheuch. Albert Schilling.

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Havre, February 26th, 1910.

Messrs. Steele, Miller & Co.

Corinth, Miss.

Dear Sir:

Herewith please take notice that we delivered the following cotton to Mr. Paul Chardin against February Deliveries:

Contract #360 E 6 29th May.

R A A L	90B	ex	"Euston"	Cipher	Fritz	1692	200 B
R B R R	91 "	"	"Fishman"	"	Pope	1376	
R E E N	19 "	"	"Seville"	"	Ball	1369	

THIS PAGE IS BOUND VERTICAL IN BOOK

Contract #363 E 8 4th June.

RYKZ	87B	ex	"Euston"	Cipher	Wagen	1704	200 B
RBQE	100	"	" "Guatemala"	"	Red		
REEN	13	"	" "Servilla"	"	Ball	1369	

Contract #381 E 9 24th July.

SPAO	100B	ex	"Mexico"	Cipher	Gray	1350	200 B
ROOX	100	"	" " " "	"	Yelow	1336	

Contract #386 E 10 30th July

RHOD	99B	ex	"Konakey"	Cipher	Cycob	1665	200 B
REEN	1	"	" "Servilla"	"	Ball	1369	
SZKA	84	"	" "Louisiane"	"	Polly	1585	
RILW	16	"	" "Mexico"	"	Howze	1386	

Contract #397 E 15 12th August

RFGO	88B	ex	"A Laurent"	Cipher	June	1391	400 B
RMOZ	93	"	" "Mexico"	"	Graze	1602	
RAEE	94	"	" "Guyane"	"	Blue	1334	
RAXY	94	"	" "Konasky	"	Inman	1526	
REEN	27	"	"Sevilla"	"	Ball	1369	
RILW	4	"	"Mexico"	"	Howze	1386	

1200 B

Yours very truly,

(Signed) SCHEUCH & Co.

571 LETTER FROM SCHEUCH & COMPANY, DATED MARCH 22, 1910.

Exhibit Marked No. 3.

Filed November 20th, 1911.

Offered in Connection with Testimony of C. H. G. Linde by Complainant.

United States District Court, Eastern District of Louisiana.

J. A. E. Pyle, Trustee,

vs. No. 14240

Texas Transport & Terminal Co. et als.

SCHEUCH & Co. 3 Ferd. Scheuch, Albert Schilling.
Adresse Telegraphique:
SCHEUCH-HAVRE.
Telephone 912 Havre March 22nd, 1910.

Messrs. Steele, Miller & Co.
Corinth (Miss.)

Dear Sirs:

Please note that we delivered the following cotton to Paul Chardin against

Contract #360 of 29th May E 6

R O Y A	35B	Parke	1415	ex	"Virginie"	I
R A C B	61 "	Time	1432		"	
R.E.A.F	78 "	Howze	1385		"	
R.P.U.C	26 "	Cox	1402		"Honduras"	
	200B					

Contract #363 of June 4th E 8

R A C B	23B	Time	1432	ex	"Virginie"	I
R.X.A.M	93 "	Phone	1448		"	
R O Y A	9 "	Parke	1415		"	
R K M P	75 "	Furs	1457		"Honduras"	
	200B					

Contract #386 of July 30th E 10

R O C O	71B	June	1391	ex	"St. Laurent"
R P U C	48 "	Cox	1402		"Honduras"
R X Z K	67 "	June	1391		" " "
R.H.I S	14 "	Irwin	1419		"Californian"
	200B				

572 Contract #397 of 12 About, 1910.

R A B W	75B	ex	"Virginie I"	June	#1437
R C A A	85 "		"	Howze	#1388
R C T F	40 "		"	Long	#1447
	200B				E 15
R I N C	73B	ex	"Virginie I"	Cox	#1405
K W O Z	85 "		"	"	#1405
R C T F	42 "		"	Long	#1447
	200B				

Yours very truly,

(Signed) SCHEUCH & Co.

EXHIBIT MARKED No. 4.
Filed November 20th, 1911.

Statement from Scheuch & Company, Offered in Connection with Testimony of C. H. G. Linde, by Complainant.

United States District Court, Eastern District of Louisiana.

J. A. E. Pyle, Trustee,
vs.
Texas Transport & Terminal Co. et als. No. 14240

Memorandum.

4

de SCHEUCH & Co. Telephone 9, 12

25, Rue de la Bourse.
A Messrs. Steele, Miller & Co. Havre, le 2, April 1910.

Corinth, Miss.

fixing;

Fixing of Prices:

Please note that the following prices have been fixed today. Buyers name: Paul Chardin.

Contract Date	No.	Quantity	Delivery	Basis Month	Price	Premium	Invoice Price
4 June	363	50 B	April	id	91⅜	3½	94⅞

Against which we bought back the following futures:

80 B May at 91¼ Frs
" " " " " "
" " " " " "
" " " " " "

Yours very truly,

(Signed) SCHEUCH & Co.

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574 EXHIBIT MARKED No. 5.

Filed November 20th, 1911.

Letter From Scheuch & Co., Offered by Complainant in Connection With Testimony of C. H. G. Linde.

United States District Court, Eastern District of Louisiana.

J. A. E. Pyle, Trustee,
vs. No. 14240.
Texas Transport & Terminal Co., et als.

Scheuch & Co.
Ferd. Scheuch, Albert Schilling.

No. 5.

Addresse Telegraphique,
Scheuch-Havre.

Telephone 912.

Havre, April 16th, 1910.

Messrs. Steele, Miller & Co.,
Corinth (Miss.).

Dear Sirs:

Referring to cables exchanged we have noted with much interest that all the balance of your cotton consigned to us will be shipped by S/S Tampican & Louisiane" & we now await details.

Having checked your last consignment shipments from : "Bryan to Kaile" as to the basis you have drawn for we find that you have overdrawn the 3 1/2 F allowed by our bankers for gm. We have calculated that the amount overdrawn is abt. F. 40,000.—and as our bankers are controlling this very exactly, we have to cover this difference with them, therefore we would be obliged to you for remitting this amount by cable.

Further, the grade of your shipments is falling off heavily what you will have remarked from our outturn sheets of S/S "Kingstonian" "Memphian" & if the outturn of all the remaining cotton will be as low as these last outturns, there will

be a very large difference in value against you. We have calculated that this loss may amount to p. 120,000, in proportion to the outturn of "Kingstonian" & "Memphian" & besides the eventual loss in weight on the about 23,000 B still to receive here. Please examine these items & if you think that our remarks are correct a cable remittance would oblige us, so we can cover the banks for those differences.

Spot business is very dull here & besides some
575 small sales daily there is very little doing. Therefore, we have decided, in accordance with the opinion of your Mr. Linde, to tender all the fully-middlings & below on futures & so far we have delivered 1200 B a/c April & we shall continue to do so, as the carrying charges are too heavy to wait the end of the season when this demand may become better.

Yours very truly,
(Signed) SCHEUCH & CO.

'576 EXHIBIT No. 6.

Filed November 20, 1911.

Cablegram to Scheuch & Company Dated April 28, 1910, Offered by Complainant in Connection With Testimony of C. H. G. Linde.

Cable Message.

Western Union Telegraph Company.

Dated Corinth, Miss., 4/28/10.

To Scheuch, Havre.

J. A. E. Pyle, Trustee,
vs. No. 14,240.
Texas Transport and Terminal Company, et als.

Form No. 11. Cable Message.

The Western Union Telegraph Company.
Incorporated.

Robert C. Clowry, President and General Manager.

Corinth, Miss., 4/28/10.

Send the following message, subject to terms and conditions printed on back hereof, which are hereby agreed to.

Scheuch, Havre.

2100 & 50

Take up drafts against total daksparren dachhaken as follows 600— further— 21 88 21 90 wiefolgt pupuskaibe vilkydolly barelbonne barolbotti — — 21 61 64 66 67 68 vilkyetta barolbelta beskebespe bessubetar 69 73 — — 21 45 50 58 50 — betcobetib vilkyhazel barolbecip bedurbehum maculnaple — — 20 26 27 30 vilkyofen barembatih batucbawid atrapo hedges

You can cover at discretion.

EXHIBIT No. 7.
Filed November 20, 1911.

Statement of Drafts drawn by Steele, Miller & Company on Scheuch & Company, Offered by Complainant in Connection with Testimony of C. H. G. Linde.

STATEMENT of Drafts Drawn by STEELE, MILLER & Co. of Corinth, Miss., on the following Banks ay [at] Havre:

1000	Bales	10	drafts	Comptoir De' E'Scompte de Mulhouse.
350	"	4	"	Banque De Mulhouse.
200	"	2	"	Societe Generale.

Bills of lading to Shippers order with insurance certificates attached to said drafts, which were accepted against these alleged shipments for cotton consignments to Scheuch & Co., Havre. Said drafts were taken up on April 29th, 1910, by cash payments by Scheuch & Co., (see Scheuch & Co. statement attached hereto) from Margin Account Steele, Miller & Co., in hands of Scheuch & Co., in pursuance to cable instructions of Steele, Miller & Co. Cable copy hereto attached.

Comptoir d E'Scompte de Mulhouse, Havre, France.

Mark	No. Dft.	No. Bales	Date Dft. Sold New York	Cypher	Draft Amount Francs	Com. Banks Francs	Date 90-days' Acceptance Due
RSPC	2145	100	2/2/10	Hazel	38,148.45	95.60	5/12/10
RAIL	2158	100	2/5/10	Hazel	37,520.75	94.05	5/14/10
RMIS	2150	100	2/3/10	Hazel	38,176.25	95.65	5/14/10
QMPR	2161	100	2/5/10	Etta	37,857.00	94.05	5/14/10
QOJL	2173	100	2/9/10	Etta	39,479.25	98.95	5/16/10

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RSTE	2169	100	2/7/10	Etta	39,559.75	99.15	5/16/10
QBTK	2168	100	2/7/10	Etta	39,564.65	99.15	5/16/10
RHGA	2167	100	2/7/10	Etta	38,970.70	97.65	5/16/10
SPRD	2166	100	2/7/10	Etta	37,353.35	93.60	5/16/10
QASP	2164	100	2/7/10	Etta	38,571.80	96.65	5/16/10
		1000			385,201.95	964.50	

TOTAL.....$386,166.45

Banque de Mulhouse, Havre, France.

					Marks	Marks	
QSAR	2030	100	1/3/10	Ofen	34,107.35	85.49	4/12/10
RVNY	2027	100	1/3/10	Ofen	33,171.45	83.12	
RDAR	2026	100	1/3/10	Ofen	33,018.50	82.75	4/12/10
RDPS	2034	50	1/3/10	Naples	16,630.30	41.67	4/16/10
		350			116,927.60	293.03	

TOTAL @ $123.25 $144,474.40

Societe Generale

					Francs	Francs	
QTNE	2190	100	2/11/10	Dolly	39,595.00	99.25	5/19/10
QRFH	2188	100	2/11/10	Dolly	39,416.65	98.80	5/19/10
		200			79,011.65	198.05	

TOTAL.....$79,209.70 Fcs.

TOTAL

Comptoir d E'scompte De Mulhouse	1000	386,166.45
Banque De Mulhouse	350	144,474.40
Societe Generale	200	79,209.70
	1550	609,850.55 Fcs. or $117,278.95

EXHIBIT No. 8.
Filed November 20th, 1911.

Statement of Scheuch & Company, dated April 29, 1910, Offered by Complainant in Connection with Testimony of C. H. G. Linde.

United States District Court, Eastern District of Louisiana.

J. A. E. Pyle, Trustee,
vs.
Texas Transport & Terminal Company, et al.

No. 14240

Messieurs Steele, Miller & Co.

Havre, le 29 Avril 1910.

Doita.

SCHEUCH & Co.

Pour traites payees a D/M 1550 B/ Coton.

						Com de banque		
QSAR	100	B/	B de M	Mk	34107.35	du 12 Avril	85.49	
RVNY	100	"	id	"	33171.45	id	83.12	
RDAR	100	"	id	"	33018.50	id	82.75	
RDPS	50	"	id	"	16630.30	16 id	41.67	
							116927.60	
							117220.63	
						a 123.25 Cours du jour		frs. 144474.40
RSPC	100	B/	C M (Comptoir Mulhouse		frs. 38148.45	12 mai	frs.	95.60
RAIL	100		"		" 37520.75	14 id	"	94.05
RMIS	100		"		" 38176.25	id	"	95.65
QMPA	100		"		" 37857. "	id		94.05

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QOJL	100	"	"	39479.25	16 id	98.95
RSTE	100	"	"	39559.75	id	99.15
QBTK	100	"	"	39564.65	id	99.15
RHCA	100	"	"	38970.70	id	97.65
SPRD	100	"	"	37352.35	id	93.60
QASP	100	"	"	38571.80	id	96.65
QTNE	100	S. G C	"	39595.	" 19 id	99.25
QRFH	100	"	"	39416.65	id	98.80
						464213.60

Notre Commission 1%	465376.15
A votre Debit.	609850.55
	6098.50
Commission paid to the Comptoir Mulhouse Societe Generale ¼ of one per cent.	615949.05B 59

579 United States District Court, Eastern District of Louisiana, New Orleans Division.

J. A. E. Pyle, Trustee,
vs. No. 14,240.
Texas Transport & Terminal Company, et als.

Extract From the Liverpool Daily Post and Mercury of April 22, 1910, Attached to Affidavit of Wm. C. Dufour. Offered by Complainant in Connection With the Testimony of Charles Janvier and Thomas Holford.

Note: Copied into this transcript, beginning at page 50 thereof.

580 EXHIBIT No. 14.

Filed November 14, 1910.

Certified Copy of Proceedings in Case of S. B. & E. Cohn, et als., vs. L. C. Steele, et al., No. 157 in Equity, of the Docket of the United States Circuit Court for the Eastern Division of the Northern District of Mississippi.

In the Circuit Court of the United States for the Eastern Division of the Northern District of Mississippi.

S. B. & E. Cohn, et al., Complainants,
vs.
L. C. Steele, et al., Defendants.

Your complainants, S. B. & E. Cohn, residents of Bremen, Germany, doing business under the firm name of S. L. Cohn & Sons, would show unto the Court as follows:

That L. C. Steele, J. H. Miller and C. H. G. Linde are partners under the firm name of Steele, Miller & Company, and doing business in the City of Corinth, Alcorn County, Mississippi, and also in numerous other towns in the States of Mississippi, Alabama and Tennessee.

Your complainant would further show unto the Court that

the said defendants, L. C. Steele, J. H. Miller and C. H. G. Linde, are residents of the City of Corinth, Alcorn County, State of Mississippi.

Your complainants would further show unto the Court that they are residents and citizens of other states than the State of Mississippi, and that they are holders of accounts and other evidences of debt against the said defendants in the amount and value of considerably over two thousand dollars.

Your complainants woud further show unto the Court that the defendants are all residents of the Eastern Division of the Northern District of Mississippi, in which is holden this Honorable Court.

Your complainants would further show unto the Court that this bill is filed on behalf of themselves and all other creditors of the said defendants who may join herein, and is intended to be considered a general creditors bill.

581 Your complainants would further show unto the Court that the defendants, under the firm name of Steele, Miller & Co., are cotton merchants, buying and selling cotton to Eastern mills as well as doing a large export business to foreign countries, and that their principal place of business is in Corinth, Mississippi, but said firm has branch offices in the town [towns] of Columbus, Jackson, Tupelo, New Albany, Water Valley, and a number of other places which are unknown to your complainants.

Complainants would further show unto the Court that the said defendants sold to your said complainant several hundred bales of cotton, and, according to the custom of the cotton business these bills of lading were attached to drafts for the amount of said cotton, which was forwarded in due course of business and which drafts, with the bills of lading attached, were paid by your complainants on the good faith and belief that the said bills of lading were genuine and were issued by the railroad company which purported to issue the same, when in truth and in fact the said bills of lading attached to said drafts were spurious and bogus and were not issued by any railroad company, nor were the same signed by any agent or representative of any railroad company.

Complainants would further show that they have paid on said spurious bills of lading at least ten thousand dollars to the said defendant and without having time to make further investigation it may develop a great deal more than said

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amount for it is impossible at this time to say what bills of lading have been attached to drafts drawn by said defendants were spurious and which are not spurious or bogus.

Complainant would further show unto the Court and charge on information and belief that the said defendants have drawn drafts with bills of lading attached which are spurious and fraudulent and which drafts were paid to the said defendants, which in the aggregate will amount to several thousands of dollars, the exact amount of which is unobtainable by
582 your complainants at this time, nor is it possible to know or ascertain at this time all of the different interested parties in said matter.

Complainants would further show unto the Court that they called on said defendants and asked them to make the said amount good and the said defendants replied that all of the collateral they had was placed in the hands of other parties to secure indebtedness to them and that they had nothing with which to pay them and at the same time intimated to your complainants that they were hopelessly insolvent and were not able to pay their indebtedness.

Complainants would further show unto the Court that at the different places at which the said defendants did business as enumerated above, it became and was necessary to them to place in the hands and possession of the banks at these places collateral security in order to get said banks to pay for cotton for them, and complainants would further show that they are not able to ascertain at this time what securities or collaterals have been placed in the hands of the different banks, or what collateral or securities are in the hands of said banks at this time, but do charge upon the statement of the defendants that all of their said collateral and security are held by the different banks at the place enumerated above and other places unknown to your complainants, and they further charge that the said defendants are indebted to the different banks which hold collateral, but the amount of said indebtedness is unknown to your complainants.

Complainants would further show unto the Court that the said defendeants now have on hand several bales of cotton, which amount in [is] unknown to your complainant, and they are unable to ascertain said amount, but said complainants do charge on information and belief that the said defendants are hopelessly insolvent and unless said writ of injunction shall

issue, your complainants will suffer great and irreparable loss.

Complainants would further show that because of the character of the business, their scope and extent of ter-
583 ritory covered by the defendants in their dealings it is impossible to learn and ascertain to what extent fictitious bills of lading have been issued, or how much the said defendants owe, or how much or what security they have subject to the payment of the debts of said defendant and that they and the other creditors of the said defendants have no adequate remedy at law, and that in order that a multiplicity of suits may be avoided which would result in waste and destruction of the assets of said defendant, complainants inform and charge the fact to be that it is necessary and for the best interest of all the creditors that this, a general creditors bill, be filed, and that a receiver be appointed by this Honorable Court to take charge of the affairs of the said defendant, and administer the same for the benefit of all of the creditors of said defendants and it is necessary for the protection of said creditors that receiver be appointed at once.

Complainants further charge on information and belief that the said defendants in order to secure and make certain the payment of indebtedness to certain creditors have within the last few days transferred, assigned, sold and conveyed to said creditors certain securities and properties, the exact amount of which and the kind of which is unknown to your complainants, and which your complainants are unable to ascertain at this time.

Complainants would further show and charge on information and belief that the said defendants have been paid for and received the direct benefit of said payment on close to a half million of dollars, which was procured on bogus and spurious bills of lading, and, in addition to said amount sold by the defendants, complainants charge on information and belief that the said defendants are indebted in vast sums, varying in amounts to divers and different other persons and corporations, the exact amount of which is unknown to your complainants.

Premises considered, your complainants pray that
584 all proper process may issue for the defendants, L. C. Steele, J. H. Miller and C. H. G. Linde, returnable as the law requires, and, in the meantime, may a receiver be appointed and placed in charge of all of the assets of the defendants of every nature and description and wherever situ-

ated and may he be directed to take such steps as may be necessary to preserve the assets of the said defendants and wind up the business affairs of said defendant and apply the proceeds arising from the assets of said defendants to the payment of the debts of the creditors of said defendants in their proportionate shares as may be equitable and just and your complainant has further prayed that this Honorable Court grant them a writ of injunction against the said defendant prohibiting them from disposing of, transferring or selling any of their assets of any kind or description and also any person or persons or corporations who may have in their possession securities, collateral or property belonging to the said defendants from selling, transferring or disposing of the same, and your complainants further pray that also a writ of subpoena be issued for the said defendants, requiring them to appear at a day certain before this Honorable Court to be made to disclose and show to this Honorable Court each and every person, firm or corporation to whom they are indebted, giving the exact amount of each indebtedness, and also to give information or [of] the amount of collateral, or securities that is held by any firm, individual or corporation, and to give any other information that may be desired that will be of a benefit and aid to your receiver in winding up and settling up the affairs of the said defendants and for such other, further, or more general relief as the Court may deem just and right.

And in duty bound will ever pray, etc.

(Signed) W. J. LAMB, Sol.

585 State of Mississippi,
Alcorn County.

Personally appeared before me, the undersigned official in and for said county and state, W. J. Lamb, who on oath states that he is the attorney for the complainant in the above styled cause and that the facts set forth in the foregoing petition of his own knowledge are true and correct as stated, and those upon information and belief, he verily believes to be true as stated. (Signed) W. J. LAMB.

Subscribed and sworn to before me, this the 26th day of April. 1910. (Signed) O. M. HINTON,
[Chancery Court Seal, Clerk.
Alcorn County, Miss.]

Indorsed: #157. In the Circuit Court of U. S. for East. Div. of N. Dist. of Miss. B. Cohn, et al., vs. L. C. Steele, et al. O. Bill. Filed this April 26th, 1910. L. E. Oldham, Clerk. W. J. Lamb, Lawyer, Corinth, Miss.

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586 In the Circuit Court of the United States in and for the Eastern Division of the Northern District of Mississippi.

S., B. & E. Cohn, et al.,
vs.
L. C. Steele, et al., Defendants.

This day come on to be heard the application of S., B. E. & R. Cohn asking that they be granted a restraining order against the defendants, S. C. Steele, J. H. Miller and C. H. G. Linde, and also asking that a receiver be appointed to take charge of the affairs, effects and assets of the defendants, and it appearing to the satisfaction of the Court that said restraining order should issue, as prayed for, it is therefore ordered, adjudged and decreed that said writ of injunction do issue as prayed for upon the complainants entering into bond conditioned according to law in the sum of ten thousand dollars, and that the said defendants, their servants or their agents, both individually, jointed and collectively, be restrained from transferring, selling or conveying, using or disposing of any of the moneys, cotton, collaterals or securities or any of the assets of every nature, kind and description, and wherever situated belonging to said defendants, either as a firm or as individuals. And it is further ordered and decreed that the said defendants shall appear before me at Jackson, Mississippi, on the 6th day of May, 1910, at 10 o'clock A. M., to show cause if any they can, why a receiver should not be appointed to take charge of the business, assets and effects of said defendants, and settle the same according to law.

Done in vacation this the 27th day of April, 1910.

(Signed) H. C. NILES, Judge.

Indorsed: #157. D. Cohn, et al., vs. L. C. Steele, et al. Order for Issuance of Writ of Injunction and Appearance of Defendants. Filed April 28th, 1910. L. E. Oldham, Clerk. Ent. M/B 2, page 604.

587 In the Circuit Court of the United States for the Eastern Division of the Northern District of Mississippi.

S. Cohn, et al., Complainants,
vs.
L. C. Steele, et al., Defendants.

Come on to be heard the application of S., B. & E. Cohn, asking that the defendants, L. C. Steele, J. H. Miller and C. H. G. Linde, doing business under the firm name of Steele, Miller & Co., be restrained from disposing of any of their assets of any kind and description; and

It further appearing to the satisfaction of the Court that on the 27th day of April, 1910, this Court granted said writ of injunction upon the complainants giving bond in the sum of $10,000.00, conditioned according to law; and

It further appearing to the satisfaction of the Court that said complainants gave such bond as required by the order of said Court and that the said writ of injunction did issue and that the said defendants were restrained from disposing of any of their assets of every kind and description and no matter where situated; and

It further appearing to the satisfaction of the Court that at the time said writ of injunction was asked and granted by this Court that the said complainants also asked that a receiver be appointed to take charge of the affairs of said defendants, and that said Court granted an order citing said defendants to appear at Jackson, Miss., on the 6th day of May, 1910, to show cause, if any they could, why said receiver should not be appointed; and

It further appearing to the satisfaction of the Court that the said defendants, L. C. Steele, J. H. Miller and C. H. G. Linde, have entered their appearance in this cause and have waived service of process and have waived the necessary time required by law and the order of the Court in which a hearing should be had for the appointment of a receiver; and

588 It further appearing to the satisfaction of the Court that the said defendants do not resist the appointment of a receiver in this cause; and

It further appearing to the satisfaction of the Court that J. A. E. Pyle is a suitable person to be appointed receiver for

the affairs of the said defendants and to administer the same according to law and by the direction of this Court,

It is therefore ordered, adjudged and decreed that the said defendants, L. C. Steele, J. H. Miller and C. H. G. Linde, be and the same are hereby enjoined and restrained from exercising any authority, control, or management pertaining to or in any way connected with their business, and also from exercising any authority, control, or management over the disposition or control of any of the assets belonging to them and wherever situated; and

It is further ordered, adjudged and decreed that J. A. E. Pyle is hereby appointed receiver, when he shall have given a bond, conditioned according to law, in the sum of twenty-five thousand dollars ($25,000.00), to be approved by the clerk of this Court, and the said Pyle is hereby directed and authorized immediately upon his giving the bond required above to take charge of all of the assets of every nature and description belonging to the said defendants and wherever situated, and also all papers and documents, books and accounts of every kind and description; and

It is further ordered, adjudged, and decreed that said Receiver J. A. E. Pyle is hereby directed and authorized to employ sufficient clerks and assistants to enable him to investigate and find out the true and exact condition of the affairs of said defendant and make a report of his findings to this Court as soon as the same can consistently be done and the said receiver is hereby authorized and empowered to sue in his own name and receive all of the money, property, or assets of the defendants and to retain and employ all necessary
589 agents, clerks and attorneys and to fix and order the compensation of such necessary agents and clerks, subject to the supervision of this Court, and said receiver is further ordered and authorized to sell any of the property of the defendants that he deems advisable to the interests of the estate at a fair and reasonable price therefor and make a report of his acts and doings to this Court; and

It is further ordered that the parties or corporations holdings [holding] claims or [of] any nature or description against the defendants, or either of them, are hereby enjoined from taking any action against the defendants, or either of them, or further prosecuting and [any] action already instituted or undertaking to interfere in any way with the property of the

defendants, except by propounding their respective claims in this Court or this cause; and

It is further ordered that the said defendants are hereby directed to turn over to the said J. A. E. Pyle, receiver, all of their assets of every nature and description and wherever situated, books, papers, accounts and everything in their possession or under their control, that will assist the said receiver in determining the true condition of said business and that will enable him to administer the same as required by law.

Done in vacation, this the 2nd day of May, 1910.

(Signed) H. C. NILES, Judge.

Indorsed: #157. S. Cohn, et al., vs. L. C. Steele, et al. Decree Appointing a Receiver, etc. Filed May 3rd, 1910. L. E. Oldham, Clerk. Ent. M/B 2, page 606-7.

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590 In the United States Circuit Court for the Eastern Division of the Northern District of Mississippi.

S. Cohn, et al.,
vs.
L. C. Steele, et al.

Know all men by these presents that we, J. A. E. Pyle, principal, Illinois Surety Company and W. J. Lamb, securities, are held and firmly bound unto the United States in the sum of twenty-five thousand dollars ($25,000.00), for which payment well and truly to be made, we, jointly and severally, bind ourselves, our heirs, executors and administrators.

The condition of the foregoing obligation is such that, whereas, the above named J. A. E. Pyle, receiver, was on the 2nd day of May, 1910, by an order of the Circuit Court of the United States for the Eastern Division of the Northern District of Mississippi, appointed receiver for L. C. Steele, J. H. Miller and C. H. G. Linde, doing business under the firm name of Steele, Miller & Co., and was appointed receiver for the purpose of taking charge of all of the assets belonging to said parties and to wind up their business, application for said receiver having been made in a general creditors bill in the above styled cause.

Now, if the said J. A. E. Pyle shall in all things faithfully discharge the duties of his office as receiver, then this obligation to be void; otherwise to remain in full force and effect.

Given under our hands this the 3rd day of May, 1910.

(Signed) J. A. E. PYLE.
(Signed) W. J. LAMB.
(Signed) ILLINOIS SURETY COMPANY,
Per W. J. LAMB, Attorney in Fact.

Approved May 4th, 1910.

L. E. OLDHAM, Clerk.
By R. D. CRENSHAW, D. C.

Indorsed: #157. In the Circuit Court of the U. S. for the Eastern Division of N. Dist. of Mississippi. S. Cohn, et al., vs. L. C. Steele, et al. Receivers Bond. Filed May 4th, 1910. L. E. Oldham, Clerk.

591 United States of America,
Northern District of Mississippi,
Eastern Division.

I, L. E. Oldham, clerk of the Circuit Court of the United States in and for the division and district aforesaid, do hereby certify that the above and foregoing pages constitute and are true and correct copies of (1) The Original Bill in the case of S. B. E. Cohn, et al., vs. L. C. Steele, et al., in Equity, #157, now pending in this Court; (2) Order for Issuance of Writ of Injunction and Appearance of Defendants; (3) Decree Appointing a Receiver, &c., and (4) Receiver's Bond, as each of same appears of record and on file in this office.

Witness my hand and the official seal of said Court at Aberdeen, in said division and district, this the 14th day of July, A. D. 1911.

(Signed) L. E. OLDHAM,
Clerk as aforesaid.
By R. D. CRENSHAW,
Deputy Clerk.

[Seal]

592 CERTIFICATE AS TO OFFICIAL CHARACTER OF CLERK BY A JUDGE.

United States of America,
Northern District of Mississippi,
Eastern Division.

I, H. C. Niles, Judge of the Circuit Court of the United States within and for the district aforesaid, the same being a court of record within and for the district aforesaid, do hereby certify that L. E. Oldham is clerk of said Court, and was such clerk at the time of making and subscribing to the foregoing certificate, and that the attestation of said clerk is in due form of law, and by the proper officer.

In testimony whereof I do hereby subscribe my name at Kosciusko, Mississippi, this 15th day of July, A. D. 1911.

(Signed) H. C. NILES,
Judge of the Circuit Court, the United States,
for the Northern District of Mississippi.

CERTIFICATE AS TO OFFICIAL CHARACTER OF JUDGE BY THE CLERK OF THE COURT.

United States of America,
Northern District of Mississippi,
Eastern Division.

I, L. E. Oldham, clerk of the Circuit Court of the United States within and for the division and district aforesaid, do hereby certify that H. C. Niles, whose name is subscribed to the foregoing certificate, was, at the time of subscribing the same, Judge of the Circuit Court of the United States, within and for the district aforesaid, duly commissioned and qualified, and that full faith and credit are due to all his official acts as such.

In testimony whereof I have hereunto set my hand and affixed the seal of said Court at Aberdeen, is [in] said division and district, this the 17th day of July, A. D. 1911.

(Signed) L. E. OLDHAM,
Clerk as aforesaid.
By R. D. CRENSHAW,
Deputy Clerk.

593 PETITION IN BANKRUPTCY.

Filed November 20.

Proceedings in the Matter of Knoop, Fabarius, et al., vs. Steele, Miller & Co., No. 123 in Bankruptcy in the U. S. District Court, Eastern Division, Northern District of Mississippi, Including Petition for Adjudication, etc., and Orders of Court Appointing J. A. E. Pyle, Receiver, etc., Being Exhibit No. 12, Offered by Complainant November 20, 1911.

In the District Court of the United States for the Northern District of Mississippi.

Knoop & Fabarius, of Bremen, Germany; H. Bischoff & Company, of Bremen, Germany; Mechanische Baumwoll Spinnerei, of Augsburg, Germany,

versus

Steele, Miller & Company.

Petition in Bankruptcy.

To the Honorable H. C. Niles, Judge of the District Court of the United States for the Northern District of Mississippi:

The petition of Knoop & Fabarius, H. Bischoff & Company and Mechanische Baumwoll Spinnerei respectfully shows that Steele, Miller & Company, a partnership being composed of L. C. Steele, J. H. Miller and C. H. D. Linde, have for the greater portion of six months next preceding the date of filing this petition had their principal place of business, and have resided in Corinth, in the County of Alcorn, and the state and district aforesaid; and owe debts to the amount of one thousand ($1,000.00) dollars; that your petitioners are creditors of said Steele, Miller & Company, having provable claims amounting in the aggregate in excess of securities held by them in the sum of five hundred ($500.00) dollars and over, that the nature and amount of your petitioners claims arise from the payment of drafts drawn by said firm, to which were attached bills of lading for cotton. These bills of lading were fictitious, and did not represent actual cotton, no cotton having ever been delivered to petitioners on account of their payment of said drafts;

wherefore, the defendant firm became indebted to the petitioners for the amount of the drafts so paid by them. The amount of drafts paid Knoop & Fabarius is in excess of $7,500.00; the amount of drafts paid by H. Bischoff & Company is in excess of $7,500.00; and the amount of drafts paid by Mechanische Baumwoll Spinnerei is in ex-
594 cess of $37,000.00. The amount thus owing to these petitioners, and to other cotton firms in Germany, aggregate, as your petitioners believe, in excess of $945,000.00. All of this indebtedness has been incurred during the last three months.

And your petitioners represent that said Steele, Miller Company, and each member of said firm, is insolvent, and within four months next preceding the date of this petition the said firm and members thereof committed acts of bankruptcy in that on the 3rd day of May, 1910, in a suit filed by S., B. & E. Cohn against said firm, and the partners thereof, in the Circuit Court of the United States for the Eastern Division of the Northern District of Mississippi, a receiver was appointed because of the insolvency of said firm, and put in charge of their property under the laws of the United States; because the said firm has conveyed, transferred, concealed or removed, or permitted to be concealed or removed part of their property with intent to hinder, delay and defraud their creditors, or some of them, and have transferred, while insolvent, a part of their property to one or more of their creditors with intent to prefer such creditors over their other creditors.

Wherefore, your petitioners pray that service of this petition, with a writ of subpoena may be made upon the said L. C. Steele, J. H. Miller and C. H. D. Linde, as provided in the Acts of Congress relating to bankruptcy, and that the said firm, and each member thereof be adujdged by the Court to be bankrupts, within the purview of said acts.

(Signed) PERCY & HUGHES,
Attorneys for Petitioners.

United States of America,
595 City of Memphis,
State of Tennessee.

On this the 4th day of May, 1910, before me personally appeared K. Tideman, who made solemn oath that he is the

agent of the petitioners in the foregoing petition in all matters recited in, and relating to said petition; that he has read the foregoing petition, and knows the contents thereof, and the facts stated therein are true; that his sources of information and the ground of his belief are based on cablegrams from petitioners, and reports of railroads and steamship lines, and interviews with some of the defendants; that the reason that this affidavit is made by him and not by the petitioners in person is that all of the petitioners, at the present time, are in Bremen and Augsburg, Germany; that he has full authority from the petitioners, having been authorized by them to make this affidavit.

(Signed) K. TIDEMAN.

Sworn to before me, this the 4th day of May, 1910.

(Signed) THOS. A. EVANS,
Notary Public.

[Notarial Seal]

United States of America,
Northern District of Mississippi,
Eastern Division.

I, L. E. Oldham, Clerk of the District Court of the United States, within and for the division and district aforesaid, do hereby certify that the foregoing petition was indorsed in filing as follows, to-wit, No. 123. Knoop & Fabarius, et al., vs. Steele, Miller & Co., in Bankruptcy. Creditors Petition. "Filed May 5th, 1910. L. E. Oldham, Clerk, by R. D. Crensham, D. C., and that said petition was filed on said date, to-wit, May 5th, 1910, as is indorsed on said petition.

Witness my hand and the official seal of said Court at Aberdeen, in said division and district, this the 14th day of July, A. D., 1911.

(Signed) L. E. OLDHAM,
Clerk as aforesaid.
By R. D. CRENSHAW, D. C.

[Seal]

596 In the District Court of the United States for the Eastern Division of the Northern District of Mississippi.

Koop & Fabarius, of Bremen, Germany; H. Bischoff & Company, of Bremen, Germany; Mechanische Baumwoll Spinnerei, of Augsburg, Germany,

vs.

Steele, Miller & Company.

Come on the motion of the petitioners in the above styled cause asking that the Court correct an error in the caption of a decree rendered in this cause on the 6th day of May, 1910; and

It appearing to the satisfaction of the Court that the caption of said decree rendered on said day says: "In the Circuit Court of the United States for the Eastern Division of the Northern District of Mississippi," when the same should have read, "In the District Court of the United States for the Eastern Division of the Norther District of Mississippi," which said error was caused by inadvertence or mistake and that said motion ought to be sustained;

It is furthermore ordered, adjudged and decreed, that said motion be and the same is hereby sustained, and that said decree, when corrected, shall read as follows, to-wit:

"In the District Court of the United States for the Eastern Division of the Northern District of Mississippi.

Knoop & Fabarius, or [of] Bremen, Germany; H. Bischoff & Company, of Bremen, Germany; Mechanische Baumwoll Spinnerei, of Augsburg, Germany,

vs.

Steele, Miller & Company.

Come on to be heard the petition of the complainants in the above-styled cause asking that writs of subpoena issue for L. C. Steele, J. H. Miller, and C. H. G. Linde, doing business as Steele, Miller & Company, and asking that the said defendants be adjudged bankrupt.

597 And also come on to be heard the petition of complainants asking that a receiver in bankruptcy

be appointed to take charge of all of the assets of the defendant, and wherever situated, and of the defendants, their agents and servants and carrier and transportation lines, and other persons and other corporations, be enjoined from disposing of any of the property or funds of the said Steele, Miller & Company.

And it appearing to the satisfaction of the Court that the prayers of the petitions should be granted upon the complainants entering into the bond, conditions according to law, in the sum of $5,000.00.

It is therefore ordered, adjudged and decreed that when the complainants shall have given bond in the sum of $5,000.00 conditioned according to law and the same shall have been approved by the Clerk of this Court, then the said writs as prayed for in said petition shall issue and the said J. A. E. Pyle will be receiver in bankruptcy in this cause, and all the power and authority granted to the said Pyle in the order of this day and daye [date] shall be given him as receiver in bankruptcy.

Done in vacation this the 3rd day of June, 1910.

(Signed) H. C. NILES, Judge.

Indorsed: No. 123. Knoop & Fabarius, et al. vs. Steele, Miller & Co., In Bankruptcy. Order Correcting Error in Order for Process, etc., formerly made. Filed this 6th day of June, 1910. L. E. Oldham, Clerk. By R. D. Crenshaw, D. C. Ent. M/B 1 page 909.

United States of America,
598 Northern District of Mississippi,
Eastern Division.

I, L. E. Oldham, Clerk of the District Court of the District Court of the United States within and for the division and district aforesaid, do hereby certify that the above and foregoing pages are a true copy of the Order for Process, etc., filed on the day and date above mentioned and which said order corrects the caption of an order made on the 6th day of May, 1910, and filed on the 7th day of May, 1910, to read

from, "In the Circuit Court of the United States for the Eastern Division of the Northern District of Mississippi," to, "In the District Court of the United States for the Eastern Division of the Northern District of Mississippi," as is shown to read in the caption of the decree herein, and which said corrected decree was filed in my office on the day and date shown by the indorsement herein given.

Witness my hand and the seal of said Court at Aberdeen in said division and district this the 14th day of July, A. D., 1911.

(Signed) L. E. OLDHAM,
Clerk as aforesaid.
By R. D. CRENSHAW,
Deputy Clerk.

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599 In the District Court of the United States for the Eastern Division of the Northern District of Mississippi.

Knoop & Fabarius, of Bremen, Germany; H. Bischoff & Company, of Bremen, Germany; Mechanische Baumwoll Spinnerei, of Augsburg, Germany,

vs.

Steele, Miller & Company.

Come on the motion of the petition in the above styled cause, asking that the Court correct an error which was made by inadvertence or mistake in a former decree of this Court, rendered on the 6th day of May, 1910, in the above styled cause; and

It appearing to the satisfaction of the Court that said motion ought to be sustained and that said error was made by inadvertence or mistake, and that the same ought to be corrected,

It is therefore ordered, adjudged and decreed that said decree be and the same is hereby corrected and said motion sustained and said decree shall read as follows, when corrected:

In the United States District Court for the Eastern Division of the Northern District of Mississippi.

Knoop & Fabarius, H. Bischoff & Company, Mechanische Baumwoll Spinnerei,

vs.

Steele, Miller & Company.

Come on to be heard the application of the complainants in the above styled cause, asking that L. C. Steele, J. H. Miller and C. H. G. Linde, doing business under the firm name of Steele, Miller & Company, both individually and as a firm, be adjudged bankrupts, and also a petition of the complainants against the defendants asking that an injunction issue enjoining and restraining the defendants and each of them,
600 their agents and servants, and each carrier and transportation lines and other persons and corporations from disposing of any of the property or funds of said defendants, and that a receiver be appointed to take charge of all of their assets and that the receiver be instructed to at once seize and impound all the property of said firm. And it further appearing to the satisfaction of the Court that by a previous order of the United States Circuit Court for the Eastern Division of the Northern District of Mississippi, in the cause of S. Cohn, et al., vs. L. C. Steele, et al., pending in the Circuit Court of the United States for the Eastern Division of the Northern District, J. A. E. Pyle was appointed receiver in said cause of all of the assets of every kind and wherever located of the defendants in said cause, and that said Pyle has duly and legally qualified as receiver in said cause and is now in charge of the affairs of the said Steele, Miller & Co., as receiver of the Circuit Court for the Eastern Division of the Northern District of Mississippi.

And it further appearing to the satisfaction of the Court that the complainants in the cause desire that the said receiver, J. A. E. Pyle, be appointed receiver in bankruptcy in this cause by the Court.

It is further ordered, adjudged and decreed that J. A. E. Pyle be and is hereby appointed receiver of all of the assets and property of every kind and character of and belonging to the said L. C. Steele, J. H. Miller, C. H. G. Linde, and of the firm of said Steele, Miller & Co., and said receiver is hereby

clothed with all power and authority of receivers in bankruptcy in like cases.

And it is further ordered, adjudged and decreed that the bond given by J. A. E. Pyle in the cause of S. Cohn, et al., vs. L. C. Steele, et al., shall be his bond in this cause as receiver in bankruptcy.

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It is further ordered, that said receiver is hereby authorized and directed to employ any and all necessary help, including counsel in the administration of his trust.

It further appearing to the satisfaction of the Court that because of the nature and character of the business conducted by defendants, and the mode and manner in which the books of the defendants were kept, it is necessary that a certified expert accountant be employed to audit and check up the books of the said defendants.

And it further appearing to the Court that Edward S. Elliott is a certified public accountant of good repute, and that his services can be obtained for the sum of fifteen dollars per day and traveling expenses, and that said sum is reasonable for said services.

It is further ordered, adjudged and decreed that the said receiver, J. A. E. Pyle, is hereby authorized to employ the said Edward S. Elliott as an expert accountant in this cause and to pay him for his services the said sum of fifteen dollars per day and traveling expenses.

And the said Elliott is further authorized to employ whatever assistance he may need in auditing the books of the said defendant and procure their services at as reasonable a sum as the same can be done consistent with the character and scope of the work to be done.

And it is further ordered by the Court that said Edward S. Elliott is further authorized and empowered to call on any individual, firm, corporation and transportation line for any information that he may desire that will enable him to correctly audit the books of said defendant, and that will enable him to find out the true condition of the affairs of the said defendant and that the said firm individually, cor-

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poration or person, is hereby directed to give to the said Edward S. Elliott any information in their possession that will enable him to correctly audit the books of said defendant, or that will in any way throw any light on the business transactions of said defendant.

It is further ordered by the Court that the authority of the said J. A. E. Pyle to employ the said Edward S. Elliott shall be applicable, both as receiver in bankruptcy and as receiver appointing him in the cause of S. Cohn, et al., and L. C. Steel, et al.

It is further ordered by the Court that the said receiver, J. A. E. Pyle, shall proceed to sell for the best possible price obtainable any and all cotton that he may find at any place that belongs to said defendants, Steele, Miller & Co., to them individually, and that it is to the best interest of all parties concerned that said cotton be sold in order to reduce the expense of carrying said cotton.

It is further ordered by the Court that the said J. A. E. Pyle shall continue in possession, charge and control of the affairs of the said defendants as receiver under an order appointing him in this cause in the cause of S. Cohn, et al., vs. L. C. Steele, et al., until the said complainants, Knoop & Fabarius, H. Bischoff & Company, Merchanische Baumwoll Spinnerei shall comply with an order of this Court this day granted in the above styled cause, which are styled "Petition in Bankruptcy and Petition to enjoin Steele, Miller & Co., from disposing of their property, and for writs of seizure and receiver." And when the said complainants shall have complied with said order, then the acts and doing of the said J. A. E. Pyle shall be as receiver in this cause.

Done in vacation, this 3rd day of June, 1910.

(Signed) H. C. NILES, Judge.

603 Indorsed: No. 123. Knoop & Fabarius, et als., vs. Steele, Miller & Company, In Bankruptcy. Order Correcting Error in Order Appointing Receiver and Corrected Order Appointing Receiver, etc. Filed June 6th, 1910. L. E. Oldham, Clerk. By R. D. Crenshaw, D. C. Ent M/B 1, page 106.

United States of America,
Northern District of Mississippi,
Eastern Division.

I, L. E. Oldham, Clerk of the District Court of the United States within and for the division and district aforesaid, do hereby certify that the above and foregoing pages are a true

and correct copy of an order appointing a receiver, etc., filed on the day and date above mentioned and which said order corrects the caption of an order made on the 6th day of May, 1910, and filed on the 7th day of May, 1910, to read from "In the U. S. Circuit Court for the Eastern Division of the Northern District of Mississippi," to read, "In the United States District Court for the Eastern Division of the Northern District of Mississippi," as is shown to read in the caption of the decree herein.

[Seal] Witness my hand and the seal of said Court as [at] Aberdeen in said division and district this the 14th day of July, A. D. 1911.

(Signed) L. E. OLDHAM,
Clerk as aforesaid.
By R. D. CRENSHAW,
Deputy Clerk.

604 United States of America,
Northern District of Mississippi,
Eastern Division.

I, L. E. Oldham, Clerk of the District Court of the United States in and for the division and district aforesaid, do hereby certify that the above and foregoing pages constitute and are true and correct copies of the, (1) creditors petition for adjudication in the matter of Steele, Miller & Company, In Bankruptcy, No. 123; (2) the order directing that process issue, and (3) the order appointing a receiver, as each of the same appears of record in this office.

[Seal] Witness my hand and the seal of said Court at Aberdeen in said division and district this the 14th day of July, A. D. 1911.

(Signed) L. E. OLDHAM,
Clerk as aforesaid.
By R. D. CRENSHAW,
Deputy Clerk.

605 CERTIFICATE AS TO OFFICIAL CHARACTER OF CLERK BY A JUDGE.

United States of America,
Northern District of Mississippi,
Eastern Division.

I, H. C. Niles, Judge of the District Court of the United

States, within and for the district aforesaid, the same being a court of record, within and for the district aforesaid, do hereby certify that L. E. Oldham is Clerk of said Court, and was such Clerk at the time of making and subscribing to the foregoing certificate, and that the attestation of said clerk is in due form of law, and by the proper officer.

In testimony whereof, I do hereby subscribe my name at Kosciusko, Mississippi, this the 15th day of July, A. D. 1911.

(Signed) H. C. NILES,
Judge of the District Court of the United States
for the Northern District of Mississippi.

CERTIFICATE AS TO OFFICIAL CHARACTER OF JUDGE BY THE CLERK OF THE COURT.

Unite
United States of America,
Northern District of Mississippi,
Eastern Division.

I, L. E. Oldham, Clerk of the District Court of the United States, within and for the district aforesaid, do hereby certify that H. C. Niles, whose name is subscribed to the foregoing certificate, was, at the time of subscribing the same, Judge of the District Court of the United States, within and for the district aforesaid, duly commissioned and qualified, and that full faith and credit are due to all his official acts as such.

[Seal] In testimony whereof, I have hereunto set my hand and affixed the seal of said Court at Aberdeen in said district and division, this the 4th day of July, A. D., 1911.

(Signed) L. E. OLDHAM,
Clerk of the United States District Court for
the Northern District of Mississippi.
By R. D. CRENSHAW, D. C.

606 United States District Court, Eastern District of Louisiana, New Orleans Division.

J. A. E. Pyle, Trustee,
vs. No. 14,240
Texas Transport & Terminal Company, et als.

Proceedings in the matter of Knoop, Fabarius, et al. vs. Steele, Miller & Company, No. 123, In Bankruptcy, in the District Court of the United States for the Eastern Division of the Northern District of Mississippi, including orders of John A. Davis, referee in bankruptcy, etc., appointment of J. A. E. Pyle as trustee, etc., bond of trustee, together with the certificate of the Clerk of the District Court of the United States for the Northern District of Mississippi, showing that John A. Davis was at the time of said proceedings the referee of said court in bankruptcy.

Offered and filed by complainant, November 20, 1911, and marked Exhibit "No. 13."

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607 In the District Court of the United States in and for the Eastern Division of the Northern District of Mississippi.

In Bankruptcy.

In the matter of:
Knoop, Fabarius, et al., Petitioners,
vs. No. 123. In Bankruptcy.
Steele, Miller & Co., Involuntary Bankrupts.

At Kosciusko, in said division and district, on this May 30th, 1910, came on to be heard the petition of Knoop, & Fabarius, of Bremen, Germany; H. Bischoff & Co., of Bremen, Germany, and Merchanische, Baum, Spinnereio, of Augsburg, Germany, against Steele, Miller & Company, a firm composed of L. C. Steele, J. H. Miller and C. H. G. Linde, or Corinth, Alcorn County, Mississippi, praying that said firm be adjudicated bankrupts; and it appearing from the certificate of the Clerk of this Court, filed herein, that the judge of said Court was absent from said division and district, and the same having

been referred to the undersigned referee in bankruptcy. Now, after the examination of said petition and the proofs adduced in support thereof, and being satisfied therefrom that the prayer of said petition should be granted. It is thereupon ordered and decreed by the Court that said Steele, Miller & Company, as a firm and individually, be, and they are hereby, adjudged and declared bankrupts, within the true intent and meaning of the acts of Congress relating to bankruptcy, approved July 1st, 1898, entitled: "An act to establish a uniform system of bankruptcy throughout the United States," and amendments thereto.

It is further ordered and decreed that no time and place be fixed for the first creditors meeting, until a later date, as the bankrupts have not filed their schedules yet.

608 Ordered, adjudged and decreed on this May 30th, A. D. 1910.

JOHN A. DAVIS,
Referee in Bankruptcy.
H. C. NILES,
U. S. Dist. Judge.

[Indorsed]: In the District Court of the United States in and for the Eastern Division of the Northern District of Mississippi. In Bankruptcy. No. 123. In Bankruptcy. In the matter of Knoop, & Fabarius, et al., Petitioners, vs. Steele, Miller & Co., Bankrupts.

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609 In the District Court of the United States in and for the Eastern Division of the Northern District of Mississippi.

In Bankruptcy.

In the Matter of:
Knoop & Fabarius, et al.,
vs. #123. In Bankruptcy.
Steele, Miller & Co., Bankrupts.

At Kosciusko, in said division and district, on this 14th day of June, 1910.

It appearing to the referee that the above named bankrupts,

Steele, Miller & Co., were on May 30th, 1910, adjudicated to be bankrupts, but owing to the fact that no schedules were filed or list of creditors furnished, it was ordered and decreed that no time and place be fixed for the first meeting of creditors; and the undersigned referee being now in the possession of a list of creditors furnished by the attorneys representing sundry creditors, it is thereupon ordered and decreed by the Court that July 11th, A. D. 1910, at 10 o'clock A. M., at Corinth, Alcorn County, Mississippi, be, and the same is hereby, fixed by the undersigned referee for the first meeting of creditors, at which time and place the bankrupts are ordered to attend in person, as required by law.

It is further ordered and decreed that notice be mailed to creditors as required by law, and a like notice be published in the Weekly Corinthian," a public newspaper published in Corinth, Miss., in its issues of June 16th and 23rd, 1910, and in no other issues.

Ordered, adjudged and decreed on this June 14th, 1910.

JOHN A. DAVIS,
Referee in Bankruptcy.

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610 In the District Court of the United States in and for the Eastern Division of the Northern District of Mississippi.

In Bankruptcy.

In the Matter of:
Knoop & Fabarius, et al., Petitioners,
vs.
Steele, Miller & Co., Defendants & Bankrupts.

(No. 123) In Bankruptcy.

At Corinth, Alcorn County, Mississippi, on July 11th, A. D. 1910.

The following is a list of the creditors who have this day proved their claims against the estate of the above named bankrupts:

Names of Creditors—Post Office—	Amount.
The National Park Bank of New York, C. P. Long, Atty., Tupelo, Miss.	$ 47,486.00
Robertson, Murdock & Co., Liverpool, Eng., W. J. Lamb, Atty.	114,604.58
Guaranty Trust Co., New York, W. J. Lamb, Atty.	15,322.93
Jno. Munroe & Co., New York, W. J. Lamb	31,259.04
Merchants & Farmers Bank, Macon, Miss., W. J. Lamb	45.00
Standard Warehouse Co., Columbus, S. C., W. J. Lamb, Atty.	23.30
R. Cohn & Shon, Bremen, Germany, W. J. Lamb.	45,346.69
J. D. Hardin, Jr., & Co., New Orleans, La., W. J. Lamb, Atty.	337.00
J. W. Cook, Maben, Miss., W. J. Lamb, Atty	463.89
C. E. Tucker, Memphis, W. J. Lamb	162.25
Mrs. M. B. Johns (rent), Corinth, Miss., W. J. Lamb	30.00
611 Stonewall Cotton Mills, Stonewall, Miss., W. J. Lamb. (Above claim in dispute)	31.90
Grenada Compress Co., Winona, Miss., W. J. Lamb	240.00
Bank of Commerce & Trust Co., Memphis, Tenn., W. J. Lamb, Atty.	19.65
Bank of Commerce & Trust Co., Memphis, Tenn., W. J. Lamb, Atty.	3,681.65
Tuckniss, Carr & Co., Liverpool, Eng., W. J. Lamb, Atty.	$ 115-7-10
Leyland Line, New Orleans, La., W. J. Lamb	21,552.75
Alcorn Electric Light Co., Corinth, Miss., W. J. Lamb	11.20
Mathiston Merc. Co., Mathiston, Miss., W. J. Lamb	105.25
F. Van Gerpen, New York, W. J. Lamb	13,881.51

612 In the District Court of the United States in and for the Eastern Division of the Northern District of Mississippi.

In Bankruptcy.

In the Matter of:

Knoop & Fabarius, et al., Petitioners,

vs. #123. In Bankruptcy.

Steele, Miller & Co., Composed of L. C. Steele, J. H. Miller and C. H. G. Linde, Bankrupts.

At Corinth, in said division and district, on this July 11th, A. D. 1910, the time and place duly appointed and fixed for the first meeting of creditors, and of which due notice was given to creditors and by publication as required by law. We, whose names are hereunder written, whose claims have been allowed and who are present or duly and legally represented, being a majority in number and amount, do hereby appoint J. A. E. Pyle, of Iuka, Tishomingo County, State of Mississippi, in said division and district, to be the trustee of said estate and fix his bond at twenty-five thousand ($25,000.00) dollars:

The National Park Bank, of New York, N. Y.	$ 47,486.00
Robertson, Murdoch & Co., Liverpool, Eng.	114,604.58
Guaranty Trust Co., New York, N. Y.	15,322.93
Jno. Munroe & Co., New York, N. Y.	31,259.04
Merchants & Farmers Bank, Macon, Miss.	45.00
Standard Warehouse Co., Columbia, S. C.	23.30
R. Cohn & Shon, Bremen, Germany	45,346.69
J. D. Hardin, Jr., & Co., New Orleans, La.	337.00
J. W. Cook, Maben, Miss.	463.89
C. E. Tucker, Memphis, Tenn.	162.25
Mrs. M. B. Johns, Corinth, Miss.	30.00
Grenada Compress Co., Grenada, Miss.	240.00
613 Bank of Commerce & Trust Co., Memphis, Tenn.	19.63
Bank of Commerce & Trust Co., Memphis, Tenn.	3,681.65
Tuckness, Carr & Co., Liverpool, Eng.	.....
Leyland Line, New Orleans, La.	21,552.75
Alcorn Electric Co., Corinth, Miss.	11.20
Mathiston Merc. Co., Mathiston, Miss.	105.25
F. Van Gerpen, New York, N. Y.	13,881.57

I, John A. Davis, the undersigned referee in bankruptcy, and before whom the above proceeding are pending in bankruptcy, do hereby ratify and approve the appointment of J. A. E. Pyle, by the creditors, as trustee in in said bankrupt proceeding.

This July 11th, A. D. 1911.

JOHN A. DAVIS,
Referee in Bankruptcy.

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614 In the District Court of the United States in and for the Eastern Division of the Northern District of Mississippi. In Bankruptcy.

In the Matter of:

Knoop, & Fabarius, et al., Petitioners,
vs. No. 123. In Bankruptcy.
Steele, Miller & Co., Bankrupts.

To Whom It May Concern:

Be it known, that I hereby signify my acceptance of the trust as trustee of the estate of the above bankrupts.

This July 11th, A. D. 1910.

J. A. E. Pyle, Trustee.

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615 In the District Court of the United States in and for the Eastern Division of the Northern District of the State of Mississippi. In Bankruptcy.

In the Matter of:

Knoop & Fabarius, et al., Petitioners,
vs.
Steele, Miller & Co., Bankrupts.

No. 123. In Bankruptcy.

I, the undersigned trustee in the above bankruptcy proceeding, do solemnly swear that I will administer justice without respect to persons, and to do equal right to the poor and to

the rich, and that I will faithfully and impartially discharge and perform all the duties incumberant on me as trustee in the above bankruptcy proceeding to the best of my ability and understanding, agreeably to the Constitution and Laws of the United States, so help me God. J. A. E. PYLE.

Subscribed and sworn to before me this the 11th day of July, A. D. 1910.

JOHN A. DAVIS, Referee.

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616 BOND OF TRUSTEE.

In the District Court of the United States for the Northern District of Mississippi, in the Eastern Division, in Bankruptcy.

In the Matter of:

Knoop & Fabarius, et al., Petitioners,

vs. In Bankruptcy.

Steele, Miller & Co., a Firm Composed of J. H. Miller & C. H. G. Linde, Defendants, Bankrupts.

Know all men by these presents, that we, J. A. E. Pyle, of Iuka, in the County of Tishomingo, State of Mississippi, in said division and district, as principal, and the Illinois Surety Company and W. J. Lamb, as sureties, are held and firmly bound to the United States of America in the sum of twenty-five thousand ($25,000.00) dollars in lawful money to the United States, to be paid to the said United States, for which payment, well and truly to be made, we bind ourselves, and our heirs, executors and administrators, jointly and severally, by these presents.

Signed and sealed this 11th day of July, A. D. 1910.

The condition of this obligation is such, that whereas the above named J. A. E. Pyle was, on the 11th day of July, A. D. 1910, appointed trustee in the case pending in bankruptcy in said Court, wherein Steele, Miller Company, a firm composed of L. C. Steele, J. G. Miller and C. H. G. Linde, are the bankrupts, and he, the said J. A. E. Pyle, has accepted said trust with all the duties and obligations pertaining thereto.

Now, therefore, if the said J. A. E. Pyle, trustee as aforesaid, shall obey such orders as said Court may make
617 in relation to said trust, and shall faithfully and truly account for all the moneys, assets and effects of the estate of said bankrupt which shall come into his hands and possession, and shall in all respects faithfully perform all his official duties as said trustee, then this obligation to be void, otherwise to remain in full force and virtue.

J. A. E. PYLE. [Seal]
ILLINOIS SURETY CO., [Seal]
By W. J. LAMB,
Atty. in Fact. [Seal]
W. J. LAMB. [Seal]

Signed and sealed in presence of:
G. A. HAZARD.
M. T. BYNUM.

I approve the foregoing bond and security. This July 11th, 1910. JOHN A. DAVIS, Referee.

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618 In the District Court of the United States in and for the Eastern Division of the Northern District of Mississippi. In Bankruptcy.

In the Matter of:
Steele, Miller & Co., Bankrupts.
#123. In Bankruptcy.

At Corinth, Mississippi, in said district, of [on] July 11th, 1910.

It appearing to the undersigned referee that J. A. E. Pyle has been duly appointed trustee of the estate of the above bankrupts, and has given bond with the Illinois Surety Co., with W. J. Lamb, Atty. in fact, and W. J. Lamb, as sureties, for the faithful performance of his duties as such trustee, and the same having been examined by the said referee, it is ordered and decreed that said bond be, and the same is hereby, approved.

This July 11th, 1910.

JOHN A. DAVIS,
Referee in Bankruptcy.

619 In the District Court of the United States in and for the Eastern Division of the Northern District of Mississippi. In Bankruptcy.

In the Matter of:
Steele, Miller & Co., Bankrupts.
#123. In Bankruptcy.

I, John A. Davis, one of the referees in bankruptcy, in and for the Northern District of Mississippi, do hereby certify that the foregoing twelve pages contain a full, true and correct copy of the original order adjudicating the said Steele, Miller & Company bankrupts, as the same appears of record in my office, and a true and correct copy of the order fixing the time and place of the first meeting of creditors as the same appears of record in my office, and a true and correct copy of the creditors who proved their claims at said first meeting as the same appears of record in my office; and a true and correct copy of the first meeting of creditors wherein J. A. E. Pyle was elected trustee of the estate of said bankrupts as the same appears of record in my office; and a true and correct copy of the original acceptance by the said J. A. E. Pyle, as trustee, as the same appears of record in my office, and a true and correct copy of the original oath of the said J. A. E. Pyle as trustee of said bankrupt's estate as the same appears of record in my office; and a true and copy of the original bond of the said J. A. E. Pyle, as trustee aforesaid, which bond is now on file in my office, together with a true and correct copy of the order made by me approving said bond as the same appears of record in my office.

Given under my hand on this the 12th day of July, A. D. 1911.

(Signed) JOHN A. DAVIS,
Referee in Bankruptcy.

620 In the District Court of the United States in and for the Eastern Division of the Northern District of Mississippi. In Bankruptcy.

In the Matter of:
Steele, Miller & Co., Bankrupts.
#123. In Bankruptcy.

To making copies of the foregoing orders, and certificate to same $5.50

United States of America,
Northern District of Mississippi,
Eastern Division.

I, L. E. Oldham, clerk of the District Court of the United States, within and for the said division and district, the same being a court of record within and for the district aforesaid, do hereby certify that Hon. John A. Davis is one of the referees in bankruptcy within and for said district, and was such referee at the time of making and subscribing to the foregoing certificate, and that the attestation of said referee is in due form of law, and by the proper officer.

In testimony whereof, I do hereby set my hand and affix the seal of said Court at Aberdeen, in said division and district, this the 17th day of July, A. D. 1911.

(Signed) L. E. OLDHAM,
Clerk as aforesaid.
By R. D. CRENSHAW,
Deputy Clerk.

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621 United States District Court, Eastern District of Louisiana, New Orleans Division.

J. A. E. Pyle, Trustee,
vs. No. 14,240.
Texas Transport & Terminal Company, et als.

Exhibits 2 to 53, inclusive, attached to the deposition of Adolph Riss, being the drafts, through bills of lading, invoices,

insurance certificates and custody bills of lading called for during the examination of Mr. Linde.

Offered by complainant and referred to in his note of evidence.

Note: Copied into this transcript, beginning at page 856 thereof.

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622 United States District Court, Eastern District of Louisiana, New Orleans Division.

J. A. E. Pyle, Trustee,
vs. No. 14,240.
Texas Transport & Terminal Company, et als.

Exhibit 1 attached to the deposition of Frans Lysell, called for during the examination of Mr. Linde.

Offered by complainant and referred to in his note of evidence.

Note: Copied into this transcript, beginning at page 146 thereof.

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623 United States District Court, Eastern District of Louisiana, New Orleans Division.

J. A. E. Pyle, Trustee,
vs. No. 14,240.
Texas Transport & Terminal Company, et als.

Exhibits 1 to 34, inclusive, attached to the deposition of Elise Paul Dubois, called for during the examination of Mr. Linde.

Offered by complainant and referred to in his note of evidence.

Note: Copied into this transcript, beginning at page 1128 thereof.

624 United States District Court, Eastern District of Louisiana, New Orleans Division.

J. A. E. Pyle, Trustee,
vs. No. 14,240.
Texas Transport & Terminal Company, et als.

Exhibits 9 to 13, inclusive, attached to the deposition of Emile Level, called for during the examination of Mr. Linde.
Offered by complainant and referred to in his note of evidence.

Note: Copied into this transcript, beginning at page 1251 thereof.

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625 United States District Court, Eastern District of Louisiana, New Orleans Division.

J. A. E. Pyle, Trustee,
vs. No. 14.240.
Texas Transport & Terminal Company, et als.

Exhibits 2 to 7, inclusive, attached to the deposition of Jules Castel, called for during the examination of Mr. Linde.
Offered by complainant and referred to in his note of evidence.

Note: Copied into this transcript, beginning at page 1298 thereof.

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626 United States District Court, Eastern District of Louisiana, New Orleans Division.

J. A. E. Pyle, Trustee,
vs. No. 14,240.
Texas Transport & Terminal Company, et als.

Admission concerning testimony of J. A. E. Pyle.

Note: Copied into this transcript, at page 558 thereof (complainant's testimony).

627 STIPULATION AS TO EXHIBITS.

Filed November 20th, 1911.

Offered by Complainant, and Referred to in His Note of Evidence.

United States District Court, Eastern District of Louisiana.

J. A. E. Pyle, Trustee, etc.,
vs.
The Texas Terminal and Transport Company.

Nos. 14,240, 14,241, 14,242, 14,243, and 14,277.

Stipulation.

It is hereby stipulated and agreed that of the exhibits attached to the depositions of witnesses summoned for the defendant banks and Paul Chardin in the above entitled and numbered causes, only the following exhibits described by the name of witness and number shall be offered in evidence; the other exhibits being by agreement withdrawn because in the opinion of counsel they are either irrelevant, cumulative or duplicates, viz.:

1. Ferdinand Scheuch:
Exhibits Nos. 1, 2, 3, 4 and 5, 12 and 13, as types of exhibits from 4 to 13.
Exhibits Nos. 14 and 18 as types of Exhibit 14 to 18. No. 18 bis.
Exhibits 19 to 29 inclusive.
Exhibits Nos. 30 and 46 as types of 30 to 46.
Exhibits Nos. 47 and 90 as types of Exhibits 47 to 90.
Exhibits 91 and 659 as types of exhibits from 91 to 659.
Exhibits 660 to 671 inclusive.

2. Adolph Eiis:
Exhibits from 1 to 53 inclusive.
Exhibits 59 and 60.
Exhibits from 61 to 121 will not be filed, but the privilege

is given to either counsel to include same in notes of evidence at or before the argument.

628 Exhibits 122 to 125 inclusive.

3. Franz Lysell:
Exhibits 1, 2, 3, 5, 6, 7, 13 and 14.

4. Paul Du Bois:
Exhibits 1 to 36 inclusive.
Exhibits 58 to 62 inclusive.

5. Emile Level:
Exhibits Nos. 3, 5, 6 and 9 to 13 inclusive.

6. J. Castel:
Exhibits Nos. 2 to 7 inclusive.
Exhibits Nos. 9 to 12 inclusive.

(Sig.) DENEGRE & BLAIR,
Solicitors for Defendant, Havre Banks & Paul Chardin.

(Sig.) DUFOUR & DUFOUR,
For Complainant.

(Sig.) GEO. H. TERRIBERRY,
Sol. for Defts.

629 OFFER OF EVIDENCE BY TEXAS TRANSPORT & TERMINAL CO. AND COMPAGNIE GENERALE TRANSATLANTIQUE.

Filed November 20, 1911.

District Court of the United States, Eastern District of Louisiana.

J. A. E. Pyle, Trustee,
vs.
Texas Transport & Terminal Co., et al.

No. 14,240. In Admiralty.

Offer of Evidence by Texas Transport & Terminal Company and Compagnie Generale Transatlantique.

The above defendants offer, produce and file in evidence:

1. Their original answer and their amended answer, with the order of the Court permitting the filing thereof.

2. Testimony of Jules Clement Girard, taken under commission before Frank H. Mason, United States Consul Generale at Paris, France. on October 23, 1911.

3. Testimony of Francois Henri Edde, taken under commission before Frank H. Mason, United States Consul General at Paris, France, on October 23, 1911.

4. Testimony of William H. Hendren, taken before Frank H. Mortimer, United States Commissioner at New Orleans, La., on October 26, 1911, together with statement subsequently furnished to supplement said testimony.

5. The copies of all bills of lading herein filed by either the complainant or by the other defendants.

6. Notification in letter of Frank H. Mortimer, clerk, to Compagnie Generale Transatlantique, of date February 15th, 1911, to the effect that all injunctive orders of the Court in

respect of the cotton in controversy were released and dissolved.

7. Stipulation between W. A. Percy and Messrs. Dufour & Dufour, solicitors for complainant, and George H. Terriberry, solicitor for Compagnie Generale Transatlantique
630 and Texas Transport & Terminal Company, relative to setting up demands for damages and claims against complainant and the cotton in the answer of said defendants, and relative to the application of the testimony taken in any one case to all of the cases pending between the parties.

Nov. 20, 1911.

(Signed) GEO. H. TERRIBERRY,
Solicitor for Compagnie Generale Transatlantique and Texas Transport & Terminal Co.

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631 EVIDENCE ON BEHALF OF THE TEXAS TRANSPORT & TERMINAL COMPANY AND THE COMPAGNIE GENERALE TRANSATLANTIQUE.

United States District Court, Eastern District of Louisiana, New Orleans Division.

J. A. E. Pyle, Trustee,
vs. No. 14,240.
Texas Transport & Terminal Company, et als.

Original answer and amended answer of the Texas Transport & Terminal Company and Compagnie Generale Transatlantique, with the order of Court permitting the filing of the amended answer.

Offered by the Texas Transport & Terminal Company and the Compagnie Generale Transatlantique.

Note: Copied into this transcript, beginning at pages 347 and 352, respectively, therefor.

632 United States District Court, Eastern District of Louisiana.

J. A. E. Pyle, Trustee,
vs. No. 14240.
Texas Transport & Terminal Company, et als.

Deposition of Jules Clement Girard, taken under commission issued out of the clerk's office, United States District Court, Eastern District of Louisiana, on September 21st, 1911, in the above entitled and numbered cause, on behalf of the Texas Transport & Terminal Company and the Compagnie Generale Transatlantique, Defendants. Filed November 20th, 1911.

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633 In the District Court of the United States for the Eastern District of Louisiana.

J. A. E. Pyle, Trustee of Steele, Miller & Company,
vs. No. 14240. In Equity.
Texas Transport & Terminal Company, et al.

Direct Examination.

Interrogatory No. 1:
What is your age, residence and employment?

To the first interrogatory he saith:
Jules Clement Girard, aged [age] sixty-one years, residing 32 rue Steffen Asnieres; chief accountant of the Compagnie Generale Transatlantique.

Interrogatory No. 2:
Are you connected with Compagnie Generale Transatlantique? If you answer "yes," please state in what capacity and what are your duties, and how long you have been so engaged.

To the second interrogatory he saith:
As chief accountant; in the service of the company since 1880.

Interrogatory No. 3:

Assuming that the steamer Texas, owned by Compagnie Generale Transatlantique, was detained at New Orleans, Louisiana, from May 7, 1910, to May 16, 1910, nine days, can you state what damages the owner sustained by such detention? If you answer "yes," please state what said damages amounted to, and give items that make up said sum, stating the amount of the damages and the items of damage in money of the United States of America.

To the third interrogatory he saith:

The damages sustained by the Compagnie Generale Transatlantique owing to the detention of the Texas at New Orleans from May 7th to May 16th, 1910, amounts to
634 Fcs. 8669.46—that is, in money of the United States of America, $1683.41, composed as follows:

	Frs.	$
Pay and food of officers and crew, 9 days at Frs. 285.43, or $55.425.....	2,568.87	498.80
Coal and oil, 9 days at Frs. 52.50, or $10.19	472.50	91.75
Telegrams	450.00	87.38
Depreciation, 5% on Frs. 1,680,000 Frs. 84,000 x 9 / 365	2,071.24	402.19
Interest, 5% on Frs. 1,680,000 Frs. 84,000 x 9 / 365	2,071.24	402.19
Insurance, 2 1/2% on Frs. 1,680,000 Frs. 42,000 x 9 / 365	1,035.61	201.10
	Frs. 8,669.46	$1,683.41

Interrogatory No. 4:

If you answer the foregoing interrogatories in the affirmative, state what experience you have had in such matters, and also state any and all facts that make it possible for you to know the damage sustained by the Compagnie Generale Trans-

atlantique through the detention of the Texas nine days during May, 1910, at New Orleans.

To the fourth interrogatory he saith:

In my capacity as chief accountant I am in a position to know, as shown by the books, the daily expenses of each vessel, either at sea or in port.

Interrogatory No. 5:

What, in money of the United States of America, was the salary of the officers and crew of the Texas while detained at New Orleans nine days in May, 1910?

To the Fifth interrogatory he saith:

The pay of officers and crew is composed as follows:

635	Monthly Pay.	
Ship's Crew:	Frs.	
Captain	400.00	
Second captain	250.00	
2 lieutenants at $150.00	300.00	
One lieutenant	80.00	
Two boatswains	265.00	
Eight seamen	640.00	
One apprentice	50.00	
One cabin boy	35.00	Frs. 2,020.00
Engine Room:		
Chief engineer	400.00	
3 Engineers at 150.00	450.00	
3 Oilers at 132.50	397.50	
9 Firemen at 110.00	990.00	
6 Stokers at 80.00	480.00	Frs. 2,717.50
Civil Staff:		
1 Restaurant keeper	150.00	
1 Cook	125.00	
1 Cook assistant	40.00	
1 Baker	95.00	
1 Steward	60.00	Frs. 470.00
Total monthly pay		Frs. 5,207.50

(That is per day Frs. 173.58, or $33.75.)

Extra pay, per day:			
Boatswain	Frs. 1.50		
Engineers	11.33		
Oilers	3.00	Frs. 15.83,	or 3.07
Monthly pay, per day		Frs. 173.58	$ 33.71
Extra pay, per day		15.83	3.07
		189.41	36.78
		9	9
Total for nine days		Frs. 1,704.69	$331.02

Interrogatory No. 6:

What, in the money of the United States of America, was the cost of victualling the officers and crew of the Texas while detained at New Orleans nine days in May, 1910?

To the sixth interrogatory he saith:

The food of the officers and crew is composed as follows, per day:

9 Officers	at Frs. 360	Frs. 32.40		
6 Warrant officers...	2.00	12.00		
29 Men	1.78	51.62		
		96.02	or $ 18.65	
		9	9	
That is for nine days.....		Frs. 864.18	$167.85	

636 Interrrogatory No. 7:

What was the cost of the coal consumed and oil used by the steamer Texas while detained at New Orleans, Louisiana, May 7, 1910, to May 16, 1910?

To the seventh interrogatory he saith:

The consumption of coal and oil was:

3 Short tons (including putting into bunkers) at $3.25	$ 9.750		
Oils per day	.444		
	10.194		
	9		
That is for nine days.....	$91.750	or Frs. 472.50	

Interrogatory No. 8:

Can you state whether or not, in connection with said detention, cables and telegrams were sent and received by you? If you say "yes," please state the cost of the sending and receiving of said cables and telegrams.

To the eighth interrogatory he saith:

The cost of telegrams is composed as follows:

Cables from New Orleans to Paris:

April	29—16 words	
May	8—38	
"	10—38	
"	10—29	
"	11— 8	
"	12— 7	
"	12—12	
July	6—46	194 words

Cables Paris-Orleans:

May	9—62 words	
"	11— 9	
"	12—10	
July	7—13	94 words

Total words 288 at Frs. 1.55—Frs. 446.40

Cable Paris-Havre:

May 11—72 words at Frs. 0.05 3.60

Total $87.38 or Frs. 450.00

Interrogatory No. 9:

What, in May, 1910, in money of the United States of America, was the value of the steamer Texas?

To the ninth interrogatory he saith:

637 The value of the Texas in May, 1910, was estimated at frs. 1,680,000, or $326,213.59.

Interrogatory No. 10:

What did the depreciation of the steamer Texas in nine days in May, 1910, while at New Orleans, amount to?

To the tenth interrogatory he saith:

The depreciation of the Texas during nine days calculated at five per cent on the value of the ship in May, 1910, amounts to frs. 2,071.24, or $402.19.

Interrogatory No. 11:

What, in May, 1910, during the nine days that the steamer Texas was detained, was a fair rate of interest on the value of said steamer Texas, and what did it amount to during said nine days?

To the eleventh interrogatory he saith:

The rate of five per cent for interest is the usual rate; during nine days on frs. 1,680,000 it is equal to frs. 2,071.24, or $402.19.

Interrogatory No. 12:

What insurance was paid on the Texas for the nine days from May 7, 1910, to May 16, 1910, while the said steamer was detained at New Orleans?

To the twelfth interrogatory he saith:

The insurance of the Texas, calculated according to the rate we pay—that is, two and a half per cent—shows on a value of frs. 1,680,000, the sum of frs. 1,035.61, or $201.10.

Interrogatory No. 13:

What, in your opinion, during the time said steamer was detained at New Orleans, was the fair earning capacity of said steamer?

To the thirteenth interrogatory he saith:

The net profit of which the Compagnie Generale Transatlantique was deprived during the detention of the
638 vessel for nine days must be calculated at a minimum of frs. 300 per day; that is, a total of frs. 2,700, or $524.28.

Interrogatory No. 14:

If there are any facts within your knowledge that the foregoing interrogatories have not elicited, you will please state them in full.

To the fourteenth (and last) interrogatory he saith:

The figures mentioned above are true and exact, as shown by the verified calculations in the different articles of this document.

(Signed) (JULES CLEMENT) GIRARD.

(Signed) F. H. MASON,
Commissioner.

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639 CERTIFICATE OF THE CONSUL-GENERAL OF THE UNITED STATES OF AMERICA, CITY OF PARIS, REPUBLIC OF FRANCE.

I hereby certify that on the twenty-first day of October, one thousand nine hundred and eleven, before me, Frank H. Mason, Consul-General of the United States of America, in the City of Paris, Republic of France, personally appeared, pursuant to the notice hereto annexed, between the hours of ten and twelve in the forenoon, the witness named Jules Clement Girard, in the said notice, and the said Jules Clement Girard, being by me first duly cautioned and sworn to testify the whole truth and being carefully examined, deposed and said as appears by the deposition hereto annexed:

And I further certify that the said deposition was then reduced to writing under my personal supervision, and was, after it had been reduced to typewriting, subscribed by the witness, and the same has been retained by me for the purpose of sealing up and directing the same to the Clerk of the Court as required by law;

And I further certify that the reason why the said deposition was taken was that the said witness resides at more that [than] a hundred miles from New Orleans, Louisiana, the place where this cause is to be tried;

And I further certify that I am not of counsel or attorney of either of the parties, nor am I interested in the event of the cause;

And I further certify that the fee for taking such deposition, $ has been paid to me by the defendants, and the same is just and reasonable.

In witness whereof I have hereto set my hand and official

seal at the City of Paris, Republic of France, this twenty-third day of October, one thousand nine hundred and eleven.

(Signed) FRANK H. MASON,
[Seal] Consul-Generale of the United States of America at Paris (France), Commissioner.

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640 DEPOSITION OF FRANCOIS HENRI EDDE, TAKEN UNDER COMMISSION ISSUED OUT OF THE CLERK'S OFFICE, UNITED STATES DISTRICT COURT, EASTERN DISTRICT OF LOUISIANA, ON SEPTEMBER 21ST, 1911, IN THE ABOVE ENTITLED AND NUMBERED CAUSE, ON BEHALF OF THE TEXAS TRANSPORT & TERMINAL COMPANY AND THE COMPAGNIE GENERALE TRANSATLANTIQUE.

Filed November 20th, 1911.

United States District Court, Eastern District of Louisiana.

J. A. E. Pyle, Trustee,
vs. No. 14,240
Texas Transport and Terminal Company, et als.

641 DIRECT EXAMINATION.

In the District Court of the United States for the Eastern District of Louisiana.

J. A. E. Pyle, Trustee, of Steele, Miller & Company
vs. No. 14,240. In equity
Texas Transport & Terminal Company, et al.

Interrogatory No. 1:
What is your name, age, residence and employment?

To the first interrogatory he saith:

Francois Henri Edde, age forty-five years, residing in Paris; superintendent of the Compagnie Generale Transatlantique.

Interrogatory No. 2:

Are you connected with Compagnie Generale Transatlantique? If you answer "yes," please state in what capacity and what are you duties, and how long you have been so engaged.

To the second interrogatory he saith:

Yes; as superintendent; that is to say. being entrusted with all questions relating to the equipment of the ships of the Compagnie Generale Transatlantique, and the crews, etc. In the service of the said company since 1882.

Interrogatory No. 3:

Assuming that the steamer Texas, owned by Compagnie Generale Transatlantique, was detained at New Orleans, Louisiana, from May 7, 1910, to May 16, 1910, nine days, can you state what damages the owner sustained by such detention? If you answer "yes," please state what said damages amounted to, and give items that make up said sum, stating the amount of the damages and the items of damage in money of the United States of America.

642 To the third interrogatory he saith:

Yes. The damages sustained by the Compagnie Generale Transatlantique, owing to the detention of the "Texas" at New Orleans from May 7th to May 16th, 1910, amounts to frs. 8,669.46—that is, in money of the United States of America, $1,683.41, as follows:

Pay and food of officers and crew:		
9 days at frs. 285.43, or $55.425..	Frs. 2,568.87	$498.80
Coal and oil:		
9 days at frs. 52.50, or $10.19....	Frs. 472.50	$91.75
Telegrams	Frs. 450.00	$87.38
Depreciation:		
5% on frs. 1,680,000 (Frs. 84,000 x 9 365)	Frs. 2,071.24	$402.19

Interest:		
5% on frs. 1,680,000 (Frs. 84,000 x 9 365)	Frs. 2,071.24	402.19
Insurance:		
2 1/2% on frs. 1,680,000 (Frs. 42,000 x 9 365)	Frs. 1,035.61	$201.10
	Frs. 8,669.46	$1,683.41

Interrogatory No. 4:

If you answer the foregoing interrogatories in the affirmative, state what experience you have had in such matters, and also state any and all facts that make it possible for you to know the damage sustained by the Compagnie Generale Transatlantique through the detention of the Texas nine days during May, 1910, at New Orleans.

To the fourth interrogatory he says:

My duties at the Compagnie Generale Transatlantique, which consist in examining all questions relating to the equipment of the ships and notably the daily expenses of each one, at sea or in port, enable me to guarantee the figures given.

Interrogatory No. 5:

What, in money of the United States of America, was the salary of the officers and crew of the Texas while
643 detained at New Orleans nine days in May, 1910?

To the fifth interrogatory he saith:

The pay of the officers and crew is composed as follows:

Ships' crew.	Monthly pay.	
Captain	Frs. 400.00	
Second captain	250.00	
2 lieutenants at 150.00	300.00	
One lieutenant	80.00	
Two boatswains	265.00	
Eight seaman	640.00	
One apprentice	50.00	
One cabin boy	35.00	Frs. 2,020.00

Engine Room—			
Chief engineer	400.00		
3 engineers at 150.00	450.00		
3 oilers at 132.50	397.50		
9 firemen at 110.00	990.00		
6 stokers at 80.00	480.00	Frs.	2,717.50
Civil staff—			
1 restaurant keeper	150.00		
1 cook	125.00		
1 cook assistant	40.00		
1 baker	95.00		
1 steward	60.00	Frs.	470.00
Monthly pay		Frs.	5,207.50

(That is, per day, Frs. 173.58, or $33.75.)

Extra pay, per day:			
Boatswain	Frs. 1.50		
Engineers	11.33		
Oilers	3.00	Frs. 15.83,	or $3.07

Monthly pay, per day	Frs. 173.58	$ 33.71
Extra pay, per day	15.83	3.07
	189.41	36.78
	9	9
Total for nine days	Frs. 1704.69	$331.02

Interrogatory No. 6:

What, in money of the United States of America, was the cost of victualling the officers and crew of the Texas while detained at New Orleans nine days in May, 1910?

644 To the sixth interrogatory he saith:

The food of the officers and crew is composed as follows per day:

9 Officers at Frs. 3.60	Frs. 32.40	
6 Warrant officers at Frs. 2.00	12.00	
29 Men at Frs. 1.78	51.62	
	Frs. 96.02	or $ 18.65
	9	9
That is for nine days	Frs. 864.18	$167.85

Interrogatory No. 7:

What was the cost of the coal consumed and oil used by the steamer Texas while at New Orleans, Louisiana, May 7, 1910, to May 16, 1910?

To the seventh interrogatory he saith:

The consumption of coal and oil was:

3 short tons (including putting into bunkers) at $3.25	$ 9.75
Oils per day	.444
	$10.194
	9
That is, for nine days	$91.75 or Frs. 472.50

Interrogatory No. 8:

Can you state whether or not, in connection with said detention, cables and telegrams were sent and received by you? If you say "yes," please state the cost of the sending and receiving of said cables and telegrams.

To the eighth interrogatory he saith:

The cost of telegrams is composed as follows:

Cables from New Orleans to Paris—
April 29—16 words
May 8—38 words
" 10—38 words
" 10—29 words
" 11— 8 words
" 12— 7 words
" 12—12 words
July 6—46 words—194 words

Cables from Paris to New Orleans—
May 9—62 words
" 11— 9 words
" 12—10 words
July 7—13 words— 94

Total words 288 at Frs. 1.55—Frs. 446.40

Cable Paris-Havre—
May 11—72 words at Frs. 0.05 3.60

Total $87.38 or Frs. 450.00

645 Interrogatory No. 9:

What, in May, 1910, in money of the United States of America, was the value of the steamer Texas?

To the ninth interrogatory he saith:

The value of the Texas in May, 1910, was estimated at Frs. 1,680,000, or $326,213.59.

Interrogatory No. 10:

What did the depreciation of the steamer Texas in nine days in May, 1910, while at New Orleans, amount to?

To the tenth interrogatory he saith:

The depreciation of the Texas during nine days, calculated at five per cent on the value of the ship in May, 1910, amounts to Frs. 2,071.24, or $402.19.

Interrogatory No. 11:

What, in May, 1910, during the nine days that the steamer Texas was detained, was a fair rate of interest on the value of said steamer Texas, and what did it amount to during said nine days?

To the eleventh interrogatory he saith:

The rate of five per cent for interest is the usual rate, during nine days on Frs. 1,680,000, which is equal to Frs. 2,071.24, or $402.19.

Interrogatory No. 12:

What insurance was paid on the Texas for the nine days from May 7, 1910, to May 16, 1910, while the said steamer was detained at New Orleans?

To the twelfth interrogatory he saith:

The insurance of the Texas, calculated according to the rate we pay—this is, two and a half per cent—shows on a value of Frs. 1,680,000 the sum of Frs. 1,035.61, or $201.10.

Interrogatory No. 13:

What, in your opinion, during the time said steamer was detained at New Orleans, was the fair earning capacity of said steamer?

To the thirteenth interrogatory he saith:

The net profit of which the Compagnie Generale Transatlantique was deprived during the detention of the vessel for nine days must be calculated at a minimum of Frs.
646 300 per day—that is, a total of Frs. 2,700, or $524.28.

Interrogatory No. 14:

If there are any facts within your knowledge that the foregoing interrogatories have not elicited, you will please state them in full.

To the fourteenth (and last) interrogatory he saith:

All the figures mentioned have been calculated with the strictest exactitude, and I should add that certain expenses in reality borne by the company owing to the detention of the vessel have been omitted, as, for example, the extra pay of the second captain.

(Signed) F. H. EDDE.

(Signed) F. H. MASON, Commissioner.

647 CERTIFICATE OF THE CONSUL-GENERAL OF THE UNITED STATES OF AMERICA, CITY OF PARIS, REPUBLIC OF FRANCE.

I hereby certify that on the twenty-first day of October, one thousand nine hundred and eleven, before me, Frank H. Mason, Consul-General of the United States of America in the City of Paris, Republic of France, personally appeared, pursuant to the notice hereto annexed, between the hours of ten and twelve in the forenoon, the witness named Francois Henri Edde, in the said notice, and the said Francois Henri Edde, being by me first duly cautioned and sworn to testify the whole truth and being carefully examined, deposed and said as appears by the deposition hereto annexed.

And I further certify that the said deposition was reduced

to writing under my personal supervision and was, after it had been reduced to typewriting, subscribed by the witness, and the same has been retained by me for the purpose of sealing up and directing the same to the clerk of the court, as required by law.

And I further certify that the reason why the said deposition was taken was that the said witness resides at more than a hundred miles from New Orleans, Louisiana, the place where this cause is to be tried.

And I further certify that I am not of counsel or attorney of either of the parties, nor am I interested in the event of the cause.

And I further certify that the fee for taking such deposition, $———, has been paid to me by the defendants and the came [same] is just and reasonable.

In witness whereof I have hereto set my hand and official seal at the City of Paris, Republic of France, this twenty-third day of October, one thousand nine hundred and eleven.

(Signed) FRANK H. MASON,
[Seal] Consul-General of the United States of America at Paris (France), Commissioner.

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648 TESTIMONY OF WM. H. HENDREN, ON BEHALF OF TEXAS TRANSPORT & TERMINAL COMPANY AND COMPAGNIE GENERAL TRANSATLANTIQUE.

Filed November 20th, 1910.

United States District Court, Eastern District of Louisiana.

J. A. E. Pyle, Trustee,
vs.
Texas Transport & Terminal Company, et al.

Nos. 13,240, 13,241, 13,242, 13,243, and 14,277.

Testimony taken in the above numbered and entitled causes before Frank H. Mortimer, Esq., United States Commissioner,

at New Orleans, Louisiana, on the 26th day of October, 1911, on behalf of the Compagnie Generale Transatlantique.

Appearances:

Mr. George H. Terriberry, Solicitor for the Compagnie Generale Transatlantique.

Mr. William C. Dufour, Solicitor for the Trustee.

649 Admission:

It is admitted that the cotton forming the basis of the various suits herein, marks of which are set forth in the bill of complaint, and the various answers of the Compagnie Generale Transatlantique and the Texas Transport and Terminal Company, was loaded aboard the steamship Texas; that said ship was ready to sail on May 7th, 1910, when it was met with a writ of injunction, and thereupon it became necessary to unload said cotton and re-load cargo that had been discharged by the trustee of Steele, Miller & Company, as per statement which will be placed in the record.

And it is agreed that the testimony taken herein shall apply to all of the cases of Pyle, Trustee, vs. the Texas Transport & Terminal Company and others now pending in the United States District Court for the Eastern District of Louisiana, being numbered respectively 14,240, 14,241, 14,242, 14,243 and 14,227; and also to the original proceedings of Pyle, Receiver of Steele, Miller & Company, vs. Philip Lengren, Master of the steamship Texas, et al., of the docket of the United States District Court for the Eastern District of Louisiana.

WILLIAM H. HENDREN, witness sworn and examined on behalf of the Compagnie Generale Transatlantique, testified as follows:

Direct Examination.

By Mr. Terriberry:

Q. What is your name?

A. Wiliam H. Hendren.

Q. You reside in the City of New Orleans?

650 A. Yes, sir.

Q. What is your position for the Texas Transport & Terminal Co.?

A. Local manager.

Q. What is the position of the Texas Transport and Terminal Co. with reference to the Compagnie Generale Transatlantique?

A. They are agents for the Compagnie Generale Transatlantique, at New Orleans, Louisiana.

Q. Is it a fact that 2494 bales of cotton were shipped in May, 1910, by Steele, Miller and Company to Havre, France, and if such is the case please state briefly where the cotton came from, what ship it went on board of, and to whom it was consigned?

A. It is a fact that they shipped 2494 bales of cotton which was delivered to us locally and it was loaded on the steamship Texas and discharged therefrom and finally forwarded on the steamship Guatemala in March of this year.

Q. Why was it discharged from the steamship Texas?

A. There was an injunction gotten out against us by the receivers.

Q. When was the steamship Texas ready to sail?

A. The steamship Texas was ready to sail on May 7th, 1910.

Q. With this cotton on board?

A. With this cotton on board.

Q. And would she have sailed on May 7th, 1910, if she had not been enjoined?

A. She would have done so.

Q. What was necessary to do when the injunction issued against you?

A. The cotton had to be discharged.

Q. In the discharging of this cotton was it neces-
651 sary to discharge from the ship cargo other than cotton?

A. It was and that afterwards had to be re-loaded.

Q. How long was the steamer detained by reason of the discharge of the cargo and the cotton and the re-loading of the cargo?

A. From May 7th to May 16th, nine days.

Q. Would she have remained in the port of New Orleans during those nine days if said injunction had not been issued?

A. She would not have done so, but would have sailed on May 7th.

Q. The cotton you refer to on board of the steamship

Texas is the cotton you have already testified to in your examination by the complainant and you have already furnished in the record, I believe, lists of said cotton, describing it by the marks and numbers of bales thereon?

A. Yes, sir.

Q. And this is the same cotton?

A. Yes, sir; it is.

Q. To whom was this 2494 bales of cotton consigned?

A. It was consigned to shipper's order, notify Scheuch & Company, Havre, France.

Q. And it was shipped to Havre, France?

A. It was.

Q. Was the freight prepaid?

A. No. The freight was collectible at Havre.

Q. Have you ever collected this freight?

A. I have not, for the Texas.

Q. What did the freight on this cotton that was loaded on board the Texas, and that the Texas was ready to take away from here on May 7th, 1910, amount to?

A. $3310.42.

652 Q. What was the rate of freight agreed upon?

A. 26 cents on 2094 bales and 28 cents on 400 bales.

Q. And the total amounted to how much?

A. $3310.42.

Admission:

It is admitted that the copies of the bills of lading which have heretofore been introduced in evidence shall serve for the purposes of this testimony on this branch of the case.

Q. This cargo representing about 2494 bales of cotton that was discharged, as you have described, from the Texas in obedience to the situation resulting from the issuance of the injunction by the United States Court, was any cargo substituted therefor?

A. No.

Q. Did the Texas, therefore, go to Havre on that voyage empty to the extent of that cotton that was discharged?

A. It did.

Q. And the steamer and owner earned nothing for that space and that capacity represented by that cotton?

A. Nothing at all.

Q. And she would have earned it if she had carried the cotton?

A. Yes, sir.

Q. Now, when the injunction issued and it became necessary to discharge the cotton what was the next step that you took?

Admission:

It is admitted that $2682.55 for the drayage and warehousing of the cotton are reasonable and customary charges at this port, and that if any amount is due, that said amount
653 is the correct amount.

Admission:

It is admitted further that the cotton was insured by the Compagnie Generale Transatlantique and the Texas Transport and Terminal Company; that it cost $2621.54, and that said amount is the reasonable and customary charge, and if any sum is due that said amount is due.

Q. As a matter of fact you actually paid $2621.54 for the insurance of this cotton, did you not?

A. Yes, sir.

By Mr. Dufour:

Q. From the date that you stored the cotton in the press until the cotton was released on bond?

A. Yes, sir; being from May 9th, 1910, to March 23rd, 1911.

By Mr. Terriberry:

Q. Now, Mr. Hendren, you were, in March, 1911, notified that the injunction that had been issued by this Court was released, were you not?

A. Yes, sir.

Q. And what happened thereupon?

A. We forwarded the cotton by the steamship Guatemala.

Q. And sent it to Havre?

A. On the original bills of lading.

Q. And it was there delivered to the holders of the bills of lading?

A. I presume so.

Q. You have not those bills of lading yourself?

A. No, sir; they were not returned to me, but delivered to the French Line.

Q. It is not customary to return original bills of
654 lading to you in any shipment like that?

A. No, sir.

Q. And you never had any complaint that this cotton was not ultimately delivered to the parties holding your bills of lading?

A. I have not.

Q. What was the rate of freight covering such service as this by the carrier in March, 1911, when this cotton went forward on the steamship Guatemala?

A. 37 cents.

Q. And the difference between the rate of freight in March, 1911, and the contract rates of freight covering this movement in May, 1910, amount, in dollars and cents, the total difference, to have [how] much?

A. $1343.08.

Q. Will you explain briefly how you arrived at those figures?

A. On 2094 bales the weight was 1,055.761 pounds; the original rate of freight on that 2094 bales was 26 cents; the difference between 26 cents and 37 cents, 11 cents per 100 pounds, represented a loss of $1161.34 on 400 bales, the weight was 201,943 pounds, at the original rate, 28 cents, the loss was 9 cents per hundred pounds, representing $181.74.

Q. Adding these two items of loss together—

A. Made the aggregate loss $1343.08.

Q. These amounts that you have testified to are all amounts either paid out by, or were due to, the Compagnie Generale Transatlantique, are they not?

A. They are.

Q. The Texas Transport & Terminal Company
655 have not defrayed any of these expenses?

A. They have not.

Q. Of course from the issuance of the first injunction it was necessary for the Compagnie Generale Transatlantique to employ counsel for advise and for representation in court in all these matters?

A. It was.

Q. And the company did so?

A. It did.

Q. Now, as to this cotton about which you have testified, the only position occupied by the Compagnie Generale Transatlantique with respect thereto was simply that of a common carrier, was it not?

A. Yes, sir.

Q. You had no other interest in the cotton?

A. We had not.

Q. You received the cotton in the first place for carriage in the ordinary course of business and without regard to and without the knowledge of the practice of Steele, Miller and Company, did you not?

A. We did.

Q. Now, this item, $2682.55, is an amount that the Compagnie Generale Transatlantique at present owes to the Kentucky Press, is it not?

A. It is.

Cross-Examination.

By Mr. Dufour:

Q. When did the steamship Guatemala sail?

A. In March, 1911.

Q. Have you got the date?

656 A. I have not, with me.

Q. I wish you would just furnish the date that the Guatemala sailed?

A. Very well, sir.

Q. The record shows that the defendants in this case applied for permission to bond this cotton on the 10th day of February, 1911. In connection with the charges which you have given, say, concerning storage and insurance, will you please figure the prorata that the time between the date of authority bond and the date of the sailing of the vessel bears to the whole amount?

A. Yes, sir; I will send you a statement.

Q. Now, the steamship Texas was one of the vessels of the French Line, which has been referred to in this proceeding as the French Line?

A. Yes, sir.

Q. And the Guatemala is a vessel of the same line?

A. Yes, sir.

Q. What proportion of cargo—did the Guatemala carry out a full cargo?

A. She did, as well as I can remember.

Q. Would you be able to furnish us a memorandum showing whether or not that statement is correct; in other words, whether or not the Guatemala left here with a full cargo on the day she sailed, including, of course, this cotton, or whether or not she left with a partial cargo or whether or not this cotton was necessary to make up a full cargo, and what date freight was engaged for this cotton and by whom?

A. I will furnish such a statement.

657 By Mr. Terriberry:

Q. As a matter of fact, was it not the act that in order to carry this cotton forward on the Guatemala you had to turn away other cargo?

A. My recollection is that was the case.

By Mr. Dufour:

Q. Your statement will show that?

A. Yes, sir.

Agreement:

It is agreed that the witness may supply this information in the statement furnished at the request of counsel.

658 On Letter Head of
"The Texas Transport & Terminal Co."

New Orleans, U. S. A., November 7, 1911.

William C. Dufour, Esq.,
George H. Terriberry, Esq.,
City.

Dear Sirs:

In compliance with the request made by you at the taking of testimony in the case of Pyle, Trustee, vs. Texas Transport & Terminal Company, et al., October 26th, 1911, for certain information and facts which I could not then give, I beg now to supply this information in this statement:

The Guatemala, having on board the 2494 bales of cotton discharged from the Texas in May, 1910, sailed from here for Havre at about 9:30 A. M., Mar. 16th, 1911.

The charges on the 2494 bales of cotton for storage, insurance, drayage, etc., amounted to $5304.09 from the time the cotton was sent to warehouse until the Guatemala sailed, a period of 310 days. This represents an average expense of $17.11 per day. From Feby. 10th to March 16th was 33 days. On this basis the pro rata of expenses incurred between Feby. 10th, the date on which the defendant applied for permission to bond the cotton, and March 16th, the date on which the Guatemala sailed, would be $564.63.

The Guatemala carried a full cargo, and in order to take care of the 2494 bales of cotton had to shut out and leave on the wharf the following cargo:

18 Bales cotton linters.
373 Pcs. oak lumber.
130 Ash logs.
33 Poplar logs.
2378 Pcs. gum lumber.
1264 Pcs. chestnut lumber.

Our records show that on March 4th we wrote our principals, The Compagnie Generale Transatlantique, that
659 there was more cargo offering for Havre in March than the Guatemala and Virginie (then expected to arrive about March 19th) could accommodate. We forwarded the 2494 bales of cotton by the Guatemala under peremptory instructions of our attorney.

Respectfully,
WHH/S (Signed) W. H. HENDREN.

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660 United States District Court, Eastern District of Louisiana, New Orleans Division.

J. A. E. Pyle, Trustee,
vs. No. 14,240.
Texas Transport & Terminal Company, et als.

Copies of bills of lading herein filed by either the complainant or by the other defendants.

Offered by the Texas Transport & Terminal Company and the Compagnie Generale Transatlantique.

Note: Copies of the bills of lading filed by either the complainant or the other defendants are already embodied in this transcript.

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661 LETTER FROM FRANK H. MORTIMER, CLERK U. S. DISTRICT COURT, TO COMPAGNIE GENERALE TRANSATLANTIQUE.

Filed November 20th, 1911.

Offered on Behalf of the Texas Transport & Terminal Company and the Compagnie Generale Transatlantique.

United States District Court, Eastern District of Louisiana.

J. A. E. Pyle, Trustee,
vs. No. 14240.
Texas Transport & Terminal Company, et als.

United States District Court,
Eastern District of Louisiana.

Clerk's Office.

Frank H. Mortimer, Clerk.

New Orleans, La., February 15, 1911.

Compagnie Generale Transatlantique,
New Orleans, La.

Gentlemen:

I beg to notify you that in the cause entitled "J. A. E. Pyle, Trustee, versus Texas Transport & Terminal Company, et als.," No. 14,240 of the docket of this Court, the Bank of Mulhouse has this day, in pursuance of the order made and entered in said cause on February 10th, 1911, providing for the delivery of certain cotton enjoined and restrained therein, filed its

bond in the sum of $65,531.25, which bond has been duly approved by the Court.

Consequently, all injunctive orders of this Court in respect to said cotton in said cause are released and dissolved.

Respectfully,

(Signed) FRANK H. MORTIMER, Clerk.

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662 STIPULATION AS TO DEMANDS FOR DAMAGES SET UP IN THE ANSWER OF THE TEXAS TRANSPORT AND TERMINAL COMPANY AND THE COMPAGNIE GENERALE TRANSATLANTIQUE, AND RELATIVE TO THE APPLICATION OF THE TESTIMONY TAKEN IN ANY ONE CASE TO ALL OF THE CASES PENDING BETWEEN THE PARTIES.

Filed November 20, 1911.

Offered on Behalf of the Texas Transport & Terminal Co., and the Compagnie Generale Transatlantique.

United States District Court, Eastern District of Louisiana.

J. A. E. Pyle, Trustee,
vs.
Texas Transport & Terminal Company, et als.

Nos. 14,240, 14,241, 14,242, 14,243 and 14,277. In Equity.

Stipulation.

It is hereby agreed by and between W. A. Percy and Dufour & Dufour, solicitors for J. A. E. Pyle, trustee for Steele, Miller & Company, and George H. Terriberry, solicitor for Texas Transport & Terminal Company and Compagnie Generale Transatlantique, parties to the above styled and numbered causes, that the said Compagnie Generale Transatlantique, when it files its answers to the above styled and numbered causes, may incorporate in said answers all of its

claims for damages resulting from the various injunctive orders of this Court in all of said causes, and also in the cause of J. A. E. Pyle, Receiver, vs. Philip Landgren, Master, Steamship Texas, et als., No. 14,219 of the docket of the United States District Court, and it is further agreed that proof of said damages in any one of said causes shall be considered and used as evidence in the remainder of said causes, as if taken and filed in each of said causes.

It is further agreed that when said claims for damages are so set up in said answers, they shall be considered at issue without any further pleadings of the said complainant, J. A. E. Pyle, trustee.

(Signed) W. A. PERCY,
DUFOUR & DUFOUR,
Solicitors for J. A. E. Pyle, Trustee.
(Signed) GEO. H. TERRIBERRY,
Solicitor for Compagnie Generale Transatlantique and Texas Transport & Terminal Co.

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663 NOTE OF EVIDENCE ON BEHALF OF THE BANK OF MULHOUSE.

Filed November 20th, 1911.

United States District Court, Eastern District of Louisiana, New Orleans Division.

J. A. E. Pyle, Trustee,
vs. No. 14,240.
Texas Transport and Terminal Company, et als.

Note of Evidence on Behalf of the Bank of Mulhouse.

The undersigned solicitors for the above named defendant offer, produce, read and file in evidence in this cause the following depositions, exhibits and stipulations:

1. Stipulation of counsel as to the use in causes Nos. 14,240, 14,241, 14,242 14,243 and 14,277 of evidence taken and filed in any one of said causes.

2. The deposition of Ferdinand Scheuch, together with the following exhibits: Nos. 1, 2, 3, and 4, and 5, 12 and 13, as types of exhibits from 4 to 13; Nos. 14 and 18 as types of Exhibits 14 to 18, and 18 bis; Exhibits 19 to 29 inclusive; Exhibits Nos. 30 and 46 as types of 30 to 46.; Exhibits Nos. 47 and 90 as types of Exhibits 47 to 90; Exhibits 91 and 659 as types of exhibits from 91 to 659; Exhibits 660 to 671, inclusive.

3. Deposition of Albert Schilling.

4. Deposition of Adolph Riss, and the following exhibits annexed and referred to therein: Exhibits from 1 to 53 inclusive; Exhibits 59 and 60; Exhibits 122 to 125 inclusive.

5. The deposition of Franz Lysell, and the following exhibits annexed and referred to therein: Exhibits 1, 2, 3, 5, 6, 7, 13 and 14.

6. The deposition of Elisee Paul Dubois, and the following exhibits annexed and referred to therein: Exhibits 1 to 36 inclusive; Exhibits 58 to 62 inclusive.

7. The deposition of Emile Level and the following exhibits annexed and referred to therein: Exhibits
664 Nos. 3, 5, 6, and 9 to 13 inclusive.

8. The deposition of Jules Castel and the following exhibits annexed and referred to therein: Exhibits Nos. 2 to 7 inclusive; Exhibits Nos. 9 to 12 inclusive.

All of the above depositions having been taken under commission issued herein before John Preston Beecher, United States Consul at Havre.

9. Stipulation of counsel entitled in all the above causes whereby all the exhibits annexed to the foregoing depositions except those included in the above offer have, by agreement, been withdrawn because in the opinion of counsel they were irrelevant, cumulative or duplicates.

(Signed) DENEGRE & BLAIR,
Solicitors for the Bank of Mulhouse.

665 EVIDENCE ON BEHALF OF THE BANK OF MULHOUSE.

United States District Court, Eastern District of Louisiana, New Orleans Division.

J. A. E. Pyle, Trustee,
vs. No. 14,240.
Texas Transport & Terminal Company, et als.

Stipulation of counsel as to the use in causes Nos. 14,240, 14,241, 14,242, 14,243 and 14,277 of evidence taken and filed in any one of said causes.

Offered on behalf of the Bank of Mulhouse, and referred to in its note of evidence.

Note: Copied into this transcript, at page 358 thereof.

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666 United States District Court, Eastern District of Louisiana.

J. A. E. Pyle, Trustee,
vs. No. 14,242.
Texas Transport and Terminal Company, et als.

Deposition of Ferdinand Scheuch, taken under commission issued out of the clerk's office, United States District Court, Eastern District of Louisiana, on July 17th, 1911, in the above entitled and numbered cause, on behalf of Paul Chardin, defendant, filed October 24, 1911:

667 Deposition of witnesses, produced, sworn and examined the 2nd day of October in the year one thousand nine hundred and eleven, in the City of Havre, Republic of France, under and by virtue of a commission issued out of the District Court of the United States, holding sessions in and for the Eastern District of Louisiana, in a certain cause therein pending and at issue, wherein J. P. E. Pyle, trustee, is complainant and the Texas Transport and Terminal Company, et als., are defendants.

FERDINAND SCHEUCH, of No. 25 Rue de la Bourse, Havre, France, 42 years of age, being duly and publicly sworn, pursuant to the directions hereto annexed, and examined, doth depose and say as follows:

Interrogatory No. 1:

Please state your name, age, residence and occupation. How long you have been so occupied?

To the first interrogatory he saith:

My name is Ferdinand Scheuch, 42 years of age. My residence is Havre, France, where I am established under the style of Scheuch & Co., as cotton merchant and agent since 1901, for my own account, having as partner Mr. Albert Schilling.

Interrogatory No. 2:

If, in answer to previous questions you have stated that you are a member of the firm of Scheuch and Company, please state when said firm was organized, its business domicile and the nature of its business.

State also the amount of its capital and the extent of its business in the years 1908, 1909, and 1910, down to the failure of Knight, Yancey and Company and Steele, Miller and Company.

To the second interrogatory he saith:

The firm of Scheuch & Co. was organized on 15th of September, 1901, according to a contract signed between myself and Mr. Albert Schilling, which had been duly deposited at the Court of Commerce at Havre and regularly registered.

The nature of business of Scheuch & Co. was merchant's and agent's business, especially in cotton.

The firm of Scheuch & Co. started with a capital
668 of Frs. 50,000, in 1901, and while the business was only a small one in the beginning, it was growing rapidly later on in consequence of the many relations we had in the United States and at Havre. Scheuch & Co. were the agents of many first rate American cotton shippers, amongst whom I only want to name the following firms:

MM. Pferdmenges Preyer & Co., Liverpool, New Orleans, Galveston.

MM. Alexander Sprunt & Co., Wilmington, N. C.
MM. Harriss Irby Cotton Company, Oklahoma City, Okla.
MM. Tom B. Owens & Co., Fort Worth, Texas.
Reagan Bale Company, Houston, Texas.
MM. Inman & Co., Augusta, Ga.
MM. Espy Cotton Company, Savannah, Ga.

and many others, for which firms Scheuch & Co. did quite a large business at Havre, either as agents or as merchants. The extent of the business of Scheuch & Co. was the following:

During the season 1907-1908 abt. 90,000 bales cotton
During the season 1908-1909 abt. 155,000 bales cotton
During the season 1909-1910 abt. 130,000 bales cotton

All the business done by Scheuch & Co. was only commission business either as agents or as merchants. The firm never speculated, therefore all the money we made was "commission," earned by our personal activity and assiduous work. Neither Mr. Schilling nor myself spent much money for our personal expenses or for our families, but we both left all our yearly profits in the firm, believing that it could not be placed in a better way, as we both were very prudent in all our dealings and none of us ever speculated. Our capital was therefore growing every year and the firm of Scheuch & Co. would have had over Frs. 1,000,000 capital in 1910, if Steele, Miller & Co. would not have failed.

Mr. Schilling and myself are both married. Our wifes did not have and have not any personal fortune and they have nothing to expect from their parents, which I even have to assist monthly because my father-in-law is blind and cannot work. Therefore, and as we left every cent of our fortune in our firm, we have lost all we had, and owe still very large amounts to our bankers at Havre.

669 Interrogatory No. 3:

Did Scheuch and Company sustain any financial losses by reason of the failure of Knight, Yancey and Company or of Steele, Miller and Company? If yes, to what extent was its capital impaired by such losses?

To the third interrogatory he saith:

Scheuch & Co. did not sustain any substantial loss by the

failure of Knight, Yancey & Co., but we lost by the failure of Steele, Miller & Co., how things stand today, over Frs. 1,400,-000; that is to say, not only all our capital, but still about Frs. 700,000 more, which amount we owe to our banks and creditors. I call the special attention to this fact, because from the testimony of Mr. Linde it looks as if Scheuch & Co. were not loosing [losing] much by the failure of Steele, Miller & Co., which is a big mistake. Besides, it was impossible for Mr. Linde to give any approximate amounts concerning our losses, without having the accounts of all the dealings with Scheuch & Co. in hands.

I can only repeat that the firm of Scheuch & Co., as well as Mr. Schilling and myself, are completely ruined through the fraudulent practice of Steele, Miller & Co.

Interrogatory No. 4:

Was Steele, Miller and Company of Corinth, Mississippi, a customer of your firm? If yes, please state when your firm began to do business with Steele, Miller and Company.

Please explain fully your relations to Steele, Miller and Company and how your business transactions with that firm were conducted.

To the fourth interrogatory he saith:

Steele, Miller & Co. was one of the many firms of the South with which Scheuch & Co. were in business relations and which they represented at Havre. Those relations were beginning in September, 1907, when Mr. Linde, who had been working formerly as a clerk in our office and who was afterwards employed in the office of Knight, Yancey & Co., Birmingham, Ala., was engaged by Steele, Miller & Co. as a clerk. We were selling for Steele, Miller & Co. cotton as their agents, buying also occasionally cotton from them for our own account, just as we did with all our American connections. Mr. Steele and Mr. Miller were unknown to our Havre friends, but Mr. Linde was very well known at Havre by all our customers. He was considered by everybody, and especially by ourselves, as a very active, intelligent, honest and well educated young man, of whom we had the highest opinion and in whom we had the greatest confidence. When he entered with Steele, Miller & Co. we were very glad to do business with that firm and in consequence of the reasons given

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above we were able to sell for them during the first season in 1907-1908 about 11,000 bales of cotton, which was a very good result for the start of a new firm. As all this business came out very satisfactorily to all our buyers, we were very pleased to see this business increasing in 1908-1909 to about 42,000 bales of cotton. As we and everybody were very satisfied with the business in every respect (we had done all this business as agents and very little only as merchants), we had no reason at all to change the manner how this business was conducted. At the end of 1908 Steele, Miller & Co. proposed us by cable to take charge of some consignment shipments, which we accepted with pleasure, having no reason at all to refuse it. This consignment business was done in the usual way and on usual conditions. We opened a credit for reimbursement with one of our Havre banks, allowing Steele, Miller & Co. to draw for our account either at 60 or at 90 days sight on the usual cif & 6% terms. Bills of lading and insurance certificates attached to the drafts, as this is the custom in the cotton trade. Further, for having full security against any market fluctuations we sold as a hedge "futures" against those consignment shipments, which were generally held by the Havre banks, on which the drafts were drawn against those transactions. Havre banks made it a condition to hold the future hedges in their name, otherwise they would not accept any large lines of that kind of business. As I stated before, we were very satisfied with the agent's business we had done for Steele, Miller & Co. during the first two seasons, and we therefore had no reason at all to solicit their consignment business; but in view of our good re-
671 lations and the confidence we had in them, and especially in Mr. Linde, whom we considered as an honest friend of ours, we had accepted to take charge of some consignment shipments, for the outturn of which we were of course fully responsible to our bankers. Mr. Linde came over to Europe during summer 1909, and while here at Havre he declared one day that he and his firm had decided to do all the Havre business in future in the way of consigning the cotton to Havre and to sell it afterwards on the spot or to fufill [fulfill] any delivery contracts, which they may sell beforehand to Havre merchants, out of those consignments, if not otherwise stipulated with the buyers. Mr. Linde gave as a reason of this changement in doing their business that they

wanted to get all the profit out of their cotton themselves, as well for grade and staple as for weight, which was not always possible in selling their cotton under cif & 6% terms. He asked us if we would like to take care of that kind of business, on which question we replied that we were rather against such a proposition, because it would necessitate more work and trouble as heretofore and cause heavier office expenses, as well as very important bank credits, which we did not need ordinarily for our agent business. We also mentioned to Mr. Linde that we had made a nice fortune out of our agent business and we did not care at all to undertake the enormous work and trouble, which would be caused by the new intended system of consigning all the cotton. Mr. Linde then declared that if we would not or could not accept his proposition, he and his firm had decided to open an own branch office under their name at Havre, and consequently we would loose [lose] all their business, which he should regret, but what he could not prevent, because they had to look first after their own interests. After such a definite declaration Mr. Schilling and myself thought we could not do otherwise as to accept the consignment proposition, as we did not want to loose [lose] the business with Steele, Miller & Co., which firm we considered as one of our best American connections, and in which we had the utmost confidence, because Mr. Linde, a partner then of the firm, was known to us as an honest man, who no doubt would watch over the business and also over our interests. Mr.

672 Linde had also told us, that they had made lots of money during the first two seasons and that he considered his firm worth about $300,000; that they had bought the Columbus Cotton Compress and that they were building a new cotton compress at Corinth for their own account. All these informations increased our confidence in that firm and we were really glad to have the chance to be in connection with such a good firm.

The consignment business was conducted in the above mentioned way and on arrival of the cotton it was received directly from the steamers by the banks, which had accepted the documentary drafts, and warehoused in their name. The cotton was only given free when the banks had received the necessary funds to cover the amounts of such drafts accepted by them. Scheuch & Co. were attending to the classing, sell-

ing and delivering of the cotton. This is the usual way how this business is done at Havre.

Interrogatory No. 5:

During the period covered by your business relations with Steele, Miller and Company did you have any arrangements with any banks at Havre to accept drafts drawn against cotton imported by you? If so, please state in a general way what those arrangements were and give the names of the banks.

To the fifth interrogatory he saith:

Scheuch & Co. had arrangements with the banks at Havre to accept drafts drawn against cotton imported by them. The banks, with which we were working were the following: Banque de Mulhouse, Comptoir d'Escompte de Mulhouse, Credit Havrais, Societe Generale, Barrie Chalot & Co. Those banks allowed Scheuch & Co. to draw on them at 60 or 90 days sight against cotton, which Scheuch & Co. had bought in the United States or which was consigned to them. The drafts had to be accompanied by bills of lading, insurance certificates and copies of invoices, which documents remained in the possession of the banks against their acceptance of those drafts. As mentioned already before the banks held as a security against any market fluctuations the future hedges under their own name, which were sold against those imports or consignments.

673 The banks charged to Scheuch & Co. 1/4 or 3/16% banking commission for the acceptance. Besides a small commission for holding the hedges.

Interrogatory No. 6:

If, in answer to previous interrogatory, you have stated you had such arrangements with the Bank of Mulhouse, the Societe Generale, the Comptoir d'Escompte de Mulhouse, and the Credit Havrais, please state, if you have not already done so, what limit was placed by each bank upon its engagements to you.

To the sixth interrogatory he saith:

The limits, which were placed by each bank upon its engagements to Scheuch & Co. were the following:

Banque de Mulhouse up to November, 1909, allowed 5000 bales reimbursement credit, which was increased to 10,000 bales afterwards.

Societe Generale limited the reimbursement credit to 5000 bales.

Credit Havrais increased the limit of reimbursement credit in the season 1909-1910 from 5000 to 8000 bales.

Comptoir d'Escompte de Mulhohse increased the limit of reimbursement credit during 1909-1910 from 5000 to 10,000 bales.

Barrie Chalot & Co. allowed 5000 bales reimburse nent credit.

Interrogatory No. 7:

What knowledge or information did any of said banks have in respect to your relations with Steele, Miller and Company or your business arrangements or dealings with said firm?

To the seventh interrogatory he saith:

The said banks did not have any knowledge or information in respect to our relations with Steele, Miller & Co. or our business arrangements or dealings with said firm. All the reimbursement credits were opened for account of Scheuch & Co. and never for account of any American shipper.

Interrogatory No. 8:

During the said period covered by your business relations with Steele, Miller and Company, state in a general way the number or extent of shipments of cotton by said firm which were taken and held by said banks, through acceptance of drafts drawn against the cotton so shipped. Up to the time of the failure of Steele, Miller and Company, state whether or not Steele, Miller and Company had fulfilled their
674 obligations in respect to such drafts and shipments of cotton.

To the eighth interrogatory he saith:

During the said period covered by our business relations with Steele, Miller & Co. the said bank accepted documentary drafts for about 90,000 bales of cotton, shipped in the way of those consignments. Steele, Miller & Co. up to the time of the failure had always fulfilled their obligations in respect to

such drafts and shipments of cotton, with the exception of the 1550 bales, which are finally missing (that is to say, they had been shipped, but were taken back at New Orleans by some banks or firms there, when Steele & Co. failed,) and the arrested Texas "cotton."

Interrogatory No. 9:

It has been testified in this case by C. H. G. Linde, a member of the firm of Steele, Miller and Company, that in the latter part of September, or early in October, 1909, he learned for the first time that the bills of lading attached to the drafts drawn on said banks by his firm were forged and bogus. Please state whether after October 1, 1909, said firm continued to draw, as theretofore, drafts on said banks with bills of lading attached purporting to represent the cotton described in the drafts? Was there any decrease, or was there any increase in the number and amount of said drafts?

To the ninth interrogatory he saith:

Steele, Miller & Co. continued after 1st of October, 1909, to draw as theretofore documentary drafts on the said banks with through bills of lading attached, purporting to represent the cotton described in the drafts. There was an increase in the number and amount of said drafts.

Interrogatory No. 10:

Was there any increase or decrease in the number of said drafts in January and February, 1910?

To the tenth interrogatory he saith:

There was an increase during January and February, 1910. in the number of said drafts and most all our limits with our banks were reached in February, 1910. While the unliquidated engagements with Steele, Miller & Co., in September, 1909, amounted to about 15,000 to 20,000 bales,
675 they were increased up to the failure of Steele, Miller & Co. to about 45,000 bales.

Interrogatory No. 11:

State what efforts, if any, were made by Steele, Miller and Company or the said Linde to have your engagements d'importation with said banks or any of them increased, so that Steele,

Miller and Company might increase the number and amount of their drafts against said banks or some of them. Answer fully.

To the eleventh interrogatory he saith:

I refer to my deposition under No. 4, where I have given already full details in regard to the new business method Mr. Linde had proposed to us during summer 1909 and by which all cotton for Havre should be consigned with the exception of some sales to Westphalen & Co. and Paul Chardin. This of course meant an enormous increase of our "engagement d'importation" from that time during the whole season. Steele, Miller & Co. cabled us very often and especially after September, 1909, until March, 1910, asking for new reimbursement crdits, and we gave them as much reimbursement credits with our various bankers, as the limits, we had, allowed to do. When Mr. Linde was in Havre in January, 1910, he asked us for further credits, explaining that they could not sell any of their cotton at reasonable rates elsewhere, while they had to buy daily large quantities of cotton in the territories they covered in Mississippi, which cotton they wanted to ship to Havre, the best market for that kind of cotton. We replied to Mr. Linde that our bank credits were limited and that we thought it wise not to increase too much our engagements d'importations at the moment, because it was very hard to sell freely any cotton on the spot on account of the heavy stocks of cotton at Havre. Anyhow, we were glad enough to give them some more reimbursement credits, because we wanted to oblige them, so they could move the cotton, which they had to buy in the interior, according to the explanations of Mr. Linde.

Interrogatory No. 12:

It has been testified by the said Linde that in March and April his firm's shipments of cotton to Havre under
676 drafts drawn against said Havre banks were blocked; please state why, if you know, Steele, Miller and Company could not at that time draw any more drafts on said Havre banks. State whether or not at that time the drafts already drawn against cotton undelivered had reached the limits of your engagements d'importation with said banks.

To the twelfth interrogatory he saith:

Our "engagements d'importation" with Steele, Miller & Co. were very heavy when they asked again during February, 1910, for further bank reimbursement. We did not want to increase any more these engagements, because we had about 20,000 bales cotton unsold on hand at Havre and about 25,000 bales were on the way to Havre, which made a total of 45,000 bales of cotton for sale up to the end of the season. We thought, as prudent merchants, that this would be largely sufficient and we—that we could not reasonably undertake to charge us with more cotton, even if our banks would have been willing to increase the limits, which were almost reached at that time. This was the reason why we did not care to open further credits to Steele, Miller & Co.

Interrogatory No. 13:

State when and under what circumstances you learned for the first time of the use by Steele, Miller and Company of forged or bogus bills of lading. If you answer that this information was given you by said Linde, please state when and where and state fully and in detail what passed between you and Linde on that occasion.

To the thirteenth interrogatory he saith:

Mr. Linde arrived at Havre on 10th of March, 1910, with the intention to stay here during the summer and to watch personally the liquidation of their consignment shipments; as he had told us in January when he left Havre. The first thing what Mr. Linde asked us after his arrival, was for further banks credits, telling us that his firm had bought very large lines of splendid cotton, which they preferred to ship to Havre, instead of selling it to other ports, which would not pay the full price for it. We told Mr. Linde that
677 we would be pleased to get this cotton to Havre, but that it would not be reasonable for us to increase our imports of cotton, having about 45,000 bales of cotton on hand, which we judged sufficient for the moment. Then we were talking to Mr. Linde about the delay with which their shipments were arriving at Havre, telling him that if his firm was unable to look after their shipments in a better way, so that they would go through much quicker, it would be impossible for us to undertake again such a large

business. Mr. Linde repeated his explanations about the bad railroad service in the State of Mississippi and the congestion of the port of New Orleans, especially during the high season, as the reasons of the delay. We insisted upon having the steamers names on which our oustanding cotton would arrive. He declared that all our cotton was in New Orleans, either loaded already or to be loaded without any delay, and that everything would arrive at Havre before end of April. He named also several steamers. We were then speaking about the exchange of bills of lading, asking him explanations how this was done. He gave us the same reply as before, stating that this was a great favor the steamship companies were granting to his firm and that his firm had to give a full guarantee to obtain the custody bills of lading until the through bills of lading were coming back. He added to this explanation that his firm went to all this trouble only to be sure that their cotton would leave in a quicker way on the steamers named in those custody bills of lading. We then told him that we thought it might be a good idea for us to write directly to the railroads and steamship companies and to ask them to hurry forward the cotton quicker as heretofore, telling them that, otherwise, business would become impossible in future. Mr. Linde did not object to this, but he asked us to come with him to his hotel. There he took us to his room and atfer having made us swear not to tell anybody what he intended to confide to us, he told us that his firm had used falsed through bills of lading, what he had only learned, when he returned to New York in September, 1909. He
678 said that Mr. Miller had done this alone, that he and Mr. Steel were guiltless and that they had done all since that time to prevent, that anybody would loose [lose] any money by his firm. He endeavored to convince us that it had been only a passing squall and that we could sleep in all tranquility and that we would be in possession of all our cotton before end of April. After the confession of Mr. Linde we had not to change what we had said to him before concerning the desire to get our cotton in a quicker way, neither had we to threaten him, as he told us by himself that all our cotton was on the way and would arrive here before end of April. Mr. Schilling and myself have discussed for a long while in our conscience, if we should communicate this matter to our banks interested, but as we had the conviction

that Mr. Linde was sincere in telling us that there was no reason for us to be anxious, we thought it preferable not to trouble our bankers with this matter, who might have feared that all was lost. Mr. Linde said that he would not have told us anything about this if he had not feared, after the conversation we had had in our office together, that we might write to the railroad and steamship people asking explanations about the delay and the exchange of the through bills of lading, which would have thrown a bad light upon his firm. We have not told to anybody a word about what Linde had said, until October 25th, 1910, when I came back from Aberdeen, and when we believed not to be bound any longer to the word we had given to Mr. Linde, as he himself had broken it in the meantime.

Interrogatory No. 14:

Prior to said confession by the said Linde, had you known or suspected that Steele, Miller and Company were using bogus bills of lading or were practicing other fraud in their business dealings with you or others?

To the fourteenth interrogatory he saith:

Prior to the confession of Mr. Linde, on March 10th, 1910, I never have known or even suspected that Steele, Miller & Co. had been using bogus bills of lading or were practicing other frauds in their business dealings with us or other firms.

679 If I would have had the slightest idea, we would not have continued to do business with them and we would not have increased our engagements with them from about 20,000 bales in September, 1909, to 45,000 bales in March and at the time they failed.

Interrogatory No. 15:

Did you reveal the information received as aforesaid from Linde to any of the said Havre banks or to any one else? If you answer no, state why you kept silent.

To the fifteenth interrogatory he saith:

I did not reveal the information received from Mr. Linde neither to any of our banks nor to anyone else, because first I had given my word of honor to keep silent, and further I was convinced that it had been only a temporary embarrassment.

Interrogatory No. 16:

Are you familiar with the numbers and marks of the 2494 bales of cotton arrested at New Orleans after being loaded on the steamship "Texas?" Are you familiar with the marks and numbers of the various lots of said cotton claimed by said banks as well as the 1000 bales, less a shortage of six bales, claimed by Paul Chardin? Are you familiar with the dates and amounts of the drafts drawn against said cotton? Assuming such familiarity, in order to avoid the unnecessary work of repeating all said marks and numbers, we ask you the following questions:

To the sixteenth interrogatory he saith:

Yes, I am familiar with the numbers and marks of the 2494 bales of cotton arrested at New Orleans after having been loaded on the steamer "Texas." I am also familiar with the marks and numbers of the various lots of said cotton claimed by the banks in question, as well as the 994 bales claimed by Paul Chardin. I am also familiar with the dates and amounts of the drafts drawn against said cotton.

Interrogatory No. 17:

Did you ever receive any bills of lading issued by the Compagnie Generale Transatlantique (hereafter called custody bills of lading), each covering 100 bales of cotton, corresponding with the marks and numbers of the four lots of 100 bales each, claimed by the Societe Generale? If yes,
680 state when and from whom you received said custody bills of lading and what you did with them.

To the seventeenth interrogatory he saith:

Scheuch & Co. received on 26th of April, 1910, custody bills of lading issued by the Compagnie Generale Transatlantique from Steele, Miller & Co., each covering 100 bales of cotton corresponding with the marks and numbers of the four lots of 100 bales each, claimed by the Societe Generale, Havre. Scheuch & Co. handed these custody bills of lading over to the Societe Generale on the same day, accompanied by a note.

Interrogatory No. 18:

Did you ever receive any bills of lading issued by the Compagnie Generale Transatlantique (hereafter called custody bills

of lading), each covering 100 bales of cotton, corresponding with the marks and numbers of the nine lots of 100 bales each, claimed by the Bank of Mulhouse? If yes, state when and from whom you received said custody bills of lading and what you did with them.

To the eighteenth interrogatory he saith:

Scheuch & Co. received on the 3rd and 7th of May, 1910, custody bills of lading issued by the Compagnie Generale Transatlantique from Steele, Miller & Co. each covering 100 bales of cotton corresponding with the marks and numbers of the nine lots of 100 bales each, claimed by the Banque de Mulhouse, Havre. Scheuch & Co. handed these nine custody bills of lading over to the Banque de Mulhouse on the days of their receipt, accompanied by two notes.

Interrogatory No. 19:

Did you ever receive any bills of lading issued by the Compagnie Generale Transatlantique (hereafter called custody bills of lading), each covering 100 bales of cotton, corresponding with the marks and numbers of the one lot of 100 bales, claimed by the Comptoir d'Escompte de Mulhouse? If yes, state when and from whom you received said custody bills of lading and what you did with them.

To the nineteenth interrogatory he saith:

Scheuch & Co. received on the 7th of May, 1910, custody bills of lading issued by the Compagnie Generale Transatlantique from Steele, Miller & Co. covering hundred
681 bales of cotton, corresponding with the mark and numbers of one lot of hundred bales of cotton claimed by the Comptoir d'Escompte de Mulhouse, Havre. Scheuch & Co. handed these custody bills of lading over to the Comptoir d'Escompte de Mulhouse on the day of their reception, accompanied by one note.

Interrogatory No. 20:

Did you ever receive any bills of lading issued by the Compagnie Generale Transatlantique (hereafter called custody bills of lading), covering one hundred bales of cotton, corresponding with the marks and numbers of the one lot of 100 bales, claimed by the Credit Havrais? If yes, state when and

from whom you received said custody bill of lading and what you did with it.

To the twentieth interrogatory he saith:

Scheuch & Co. received on the 7th day of May, 1910, custody bills of lading issued by the Compagnie Generale Transatlantique from Steele, Miller & Co. covering one hundred bales of cotton, corresponding with the mark and numbers of one lot of 100 bales of cotton claimed by the Credit Havrais, Havre. Scheuch & Co. handed these custody bills of lading over to the Credit Havrais on the same day, accompanied by one note.

Interrogatory No. 21:

Did you ever receive any bills of lading issued by the Compagnie Generale Transatlantique (hereafter called custody bills of lading), each covering one hundred bales of cotton (less a total shortage of six bales), corresponding with the marks and numbers on the ten lots of 100 bales (less a total shortage of six bales), claimed by Paul Chardin? If yes, state when and from whom you received said custody bills of lading and what you did with them.

To the twenty-first interrogatory he saith:

Scheuch & Co. received on the 3rd and 7th of May, 1910, custody bills of lading issued by the Compagnie Generale Transatlantique from Steele, Miller & Co., covering each 100 bales (less a shortage of totally 6 bales), corresponding with the marks and numbers of the ten lots of 100 bales each (less a total shortage of 6 bales), claimed by Paul Chardin. Scheuch & Co. handed those custody bills of lading over to Paul Chardin on the days of their reception, accompanied
682 by two notes.

Interrogatory No. 22:

Had you, on any previous occasion or occasions, received custody bills of lading covering the same cotton covered or apparently covered by through railroad bills of lading attached to drafs drawn on said banks? If yes, state how often. Did you ask for and receive from Steele, Miller and Company any explanation in respect to said duplicating bills of lading? If yes, state fully what explanation was so given. If the same is

contained in any correspondence, annex the same or copies thereof to your answer to this question. If you received any subsequent oral explanation from any representative of Steele, Miller and Company, state fully what such explanation was. Did you give credit to and believe such explanation, and why did you believe them?

To the twenty-second interrogatory he saith:

Scheuch & Co. had received from Steele, Miller & Co. on many occasions such custody bills of lading covering the same cotton covered by the through bills of lading attached to drafts drawn on said banks. Scheuch & Co. received for about 30,000 bales such custody bills of lading. Scheuch & Co. wrote a letter on the 8th of December, 1909, to Steele, Miller & Co., of which we annex a true copy to this deposition as exhibit No. 1, asking an explanation about those custody bills of lading, and we received a reply to our letter from Steele, Miller & Co., dated December 23rd, 1909, of which we annex a true copy to this deposition as exhibit No. 2. Further, when Mr. Linde came to Havre in January, 1910, we asked him about this matter again and he confirmed fully what Steele, Miller & Co. had written, adding that this was a great favor and facility given to his firm only on account of the enormous business which they did with the railroad and steamship companies. He confirmed also that this was only possible in giving a full guarantee to obtain the custody bills of lading and he said, that, although it gave much trouble to his firm, they were very satisfied to have been able to make such arrangements, as they now were sure to get their cotton loaded much quicker and on the steamers named in those bills of lading. I found this explanation very plausible and believed it, being true,

683 without having had the slightest suspicion or doubt, as I understood that the transportation companies were giving all facilities to good clients, as Steele, Miller & Co. were for them. Besides, there did not come up in my mind the idea that there might have been something wrong because I considered Steele, Miller & Co., and especially Mr. Linde, as the most honest people on earth. The fact alone that we continued to do business with them and that we even increased our engagements, is the best proof that we did not have the slightest doubt about the correctness of their dealings, otherwise we would have stopped business immedi-

ately and not have risked all our fortune. If we would have had any suspicion or doubt about the fair dealings of Steele, Miller & Co. it would have been really stupid and ridiculous for us to accept any further drafts of them.

Interrogatory No. 23:

Did you give any explanation concerning said duplicating bills of lading to said banks? If so, state fully what explanation you gave? State, if you know, whether such explanation was credited and believed by said banks.

To the twenty-third interrogatory he saith:

The above explanations, received from Steele, Miller & Co. or from Mr. Linde, were given by us verbally to the banks exactly as we had received same. The explanation was credited and believed by the said banks. If the banks would have had any doubt or suspicion they would not have allowed to exchange those bills of lading, and besides they would not have given any new credit to us for shipments from Steele, Miller & Co. I think that this is very clear and the best evidence of the good faith of the banks.

Interrogatory No. 24:

State, if you know, the nature and extent of the information which the commercial world at Havre had in respect to the financial condition of Steele, Miller and Company, especially between the announcement of the failure of Knight, Yancey and Company and the bankruptcy proceedings taken in this country during the first week in May against Steele, Miller and Company. Please answer fully and in detail.

684 To the twenty-fourth interrogatory he saith:

Up to the 23rd of April, 1910, there were no rumors amongst the commercial world at Havre in respect to the financial condition of Steele, Miller & Co., and only in the evening of that day we received a telegram from Bremen stating that a bank there had refused acceptance to drafts of Steele, Miller & Co. by way of precaution on account of the fraudulent practices of Knight, Yancey & Co. On 26th of April a firm at Havre had received a cable from New Orleans, stating that Steele, Miller & Co. had failed; but the next day the same firm received another cable, asking not to spread out

this rumor, because the information was not confirmed. Only when receiving on 29th of April a cable stating to take up drafts and to cover hedges, we understood that they were in difficulties. These were all informations known about the failure of Steele, Miller & Cie up to 7th May, 1910.

Interrogatory No. 25:

Were any drafts ever drawn by Knight, Yancey and Company against any of the said four Havre banks against cotton under any engagement d'importation between you and said banks or any of them? If so, did any of the cotton so drawn against fail to arrive?

To the twenty-fifth interrogatory he saith:

Knight, Yancey & Co. have drawn at various occasions on the Credit Havrais, Societe Generale, Comptoir d'Escompte de Mulhouse and Barrie Chalot & Co. documentary drafts against cotton, which Scheuch & Co. had bought from Knight, Yancey & Co. for their own account. This cotton has never failed to arrive.

Interrogatory No. 26:

So far as you know, did the Societe Generale, or the Bank of Mulhouse, or the Comptoir d'Escompte de Mulhouse, or the Credit Havrais or any of them or any representative of them know or have any reason to know or believe at the time of the receipt of said custody bills of lading that the through railroad bills of lading attached to the drafts drawn against cotton of the same marks and numbers were forged or bogus bills of lading?

685 To the twenty-sixth interrogatory he saith:

The banks in question or any representative of them did not know or did not have any reason to know or to believe at the time of the receipt of the said custody bills of lading that the railroad bills of lading attached to the drafts drawn against cotton of the same marks and numbers were forged or bogus.

Interrogatory No. 27:

Do you know, and, if so, state whether at the time of the receipt of said custody bills of lading the said banks, or any

of them or any representative of any of them, had any reason for not believing that the said custody bills of lading represented the cotton covered by the drafts previously accepted by the banks and shipped at the dates of said drafts?

To the twenty-seventh interrogatory he saith:

The said banks or any of them or any representative of them did not have any reason, at the time of the receipt of said custody bills of lading, for not believing that the said custody bills of lading represented the cotton covered by the drafts previously accepted by the banks at the dates of said drafts.

Interrogatory No. 28:

It has been testified by the said Linde that on April 28, 1910, his firm cabled you to take up drafts drawn against a total of 2150 bales of cotton, and that on April 29th, 1910, or thereabouts, you took up drafts against the Bank de Mulhouse covering 350 bales, drafts against the Comptoir d'Escompte de Mulhouse covering 1000 bales, and drafts against the Societe Generale covering 200 bales, but did not take up drafts against Paul Chardin covering six hundred bales—please state whether this transaction or the cotton involved had anything to do with the 2494 bales of cotton arrested on board the steamship "Texas."

Please explain fully what you did in response to said cable, whether it is true or not that you paid the aforesaid drafts against the said three banks, and if you paid said drafts, state out of what funds you paid them?

To the twenty-eighth interrogatory he saith:

It is true that Schenck & Co. received in the morn-
686 ing of 29th of April, 1910, a cable from Steele, Miller & Co., stating to "take up drafts" against a total of 2150 bales. These 2150 bales are relating to drafts drawn on the following banks and Paul Chardin:

350 bales drawn for on the Banque de Mulhouse.

1000 bales drawn for on the Comptoir d'Escompte de Mulhouse.

200 bales drawn for on the Societe Generale.

600 bales drawn for on the Paul Chardin, for his own account.

These 2150 bales have nothing to do at all with the 2494 bales cotton arrested on board of the steamer "Texas." These 2150 bales are the amount of cotton which is entirely missing to the three banks and Paul Chardin. This cotton has existed, but, as we have heard, later on it was taken back by some New Orleans banks or firms just before the failure of Steele, Miller & Co., so that the said three banks and Paul Chardin have not received any of this cotton, against which they had accepted the drafts.

When we received on 29th of April the said cable from Steele, Miller & Co. we did not quite understand the meaning of "take up drafts," and therefore we did not do anything else, as we bought back the future hedges of 1550 B., which the said three banks held against those shipments and which had accepted the documentary drafts against such cotton. The 600 bales of Paul Chardin, which had been accepted by him for his own account, against certain delivery contracts between him and Steele, Miller & Co., did not concern our account.

I further certify that Scheuch & Co. have never paid or covered the aforesaid drafts to the said banks, because we had no funds in hand with which to pay those drafts, as all our money was tied up by our business engagements in our banks, so that it was impossible to pay anything or any amount, especially of such an importance. I refer in this respect to the extracts of our accounts with the three banks, of which you will get a copy of the banks, and from which it is easy to see that we have not paid such drafts or any of them to the said banks. Furthermore, the banks will confirm this in their depositions. The three said banks are still to day in possession of the documents against those 1550 bales, of which they are the owners by their acceptances of the drafts, and they have filed a claim against such cotton in the bankruptcy court against the bankrupt's estate of Steele, Miller & Co. It is true that Scheuch & Co. sent a statement to Steele, Miller & Cie with the intention to debit their account for the amounts of those drafts, drawn against the 1550 bales of cotton on our banks. By some clerical error in our office this statement reads "paid," while it should have been "accepted."

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I repeat again that Scheuch & Co. did never pay those drafts, because they had no funds in hand with which to pay them and they were not indebted to Steele, Miller & Co., as

Steéle, Miller & Co. are owing them over one million of francs. which is proven by the final balance of our accounts with them of which we annex a copy to this deposition as exhibit No. 3.

Interrogatory No. 29:

Do you know Paul Chardin, or the firm of Paul Chardin? If yes, please state in what business or different kinds of business he or said firm is engaged in and in what places.

To the twenty-ninth interrogatory he saith:

I know the firm of Paul Chardin, which is engaged in the cotton business at Havre, buying and selling cotton for their own account as merchants. I know Paul Chardin, Paris, which is the head office of the firm, and which is doing general merchandise business for their own account. Besides, I understand that they are doing banking business at Paris, but not as so-called bankers, but only for their own account; that is to say, Paul Chardin is his own banker, not opening any bank credit to other individuals or firms. I know that Paul Chardin, Paris, is accepting drafts with documents attached against cotton, which has been bought by his branch office at Havre in the United States, but Paul Chardin, Paris, is not accepting those drafts for account of other firms or individuals. Besides Paul Chardin there are many other commercial firms at Havre, which are accepting documentary drafts drawn on themselves for their own account against cotton bought in the United States, and I want only to name
688 the following firms: Westphalen & Co., Les Nevoix de I. George Schmidt; Thieullent Freres, Societe d'Importation et de Commission, A. Quesnel & Co., and others. They all do the same as Paul Chardin, but they are no bankers, but commercial firms, giving no credit to other commercial firms. All these firms, as well as Paul Chardin, are charging to the American shipper a bank commission of 3/16% or 1/4% for their acceptances, just like the Havre banks do.

Interrogatory No. 30:

Did your firm have any business dealings with Paul Chardin in 1909 or 1910? If yes, state the general nature of said business dealings. Did you have engagements d'importation with Paul Chardin similar to those you had with the said Havre banks?

To the thirtieth interrogatory he saith:

Scheuch & Co. had business dealings with Paul Chardin in 1909 and 1910. The general nature of these dealings was such that we sold to him for account of American shippers as agents cotton either on Cif & 6% terms or deliveries. In both cases it was generally understood that the American shippers had to draw on Paul Chardin, Paris, against the purchase price of the cotton at 60 days sight with bills of lading, insurance certificates and invoices attached to those documentary drafts. Scheuch & Co. sold also spot cotton to Paul Chardin in many instances, this business was done by Scheuch & Co. as merchants at the usual Havre spot terms.

Scheuch & Co. have never had any "engagements d'importations" with Paul Chardin, Havre or Paris, similar to those they had with the Havre banks. Paul Chardin has never done this kind of business.

Interrogatory No. 31:

Your answers to these interrogatories are to be used as evidence in a controversy between the trustee in bankruptcy of Steele, Miller and Company and Paul Chardin concerning the right or title to 1000 bales of cotton, less a shortage of six bales, forming part of the cotton arrested on the steamship "Texas," against which ten drafts were drawn by
689 Steele, Miller and Company on Paul Chardin, each dated January 27, 1910, at Corinth, Mississippi, to drawers' order and by them indorsed in blank, payable sixty days after sight:

One numbered 2135 for 38,201.70 francs, and reciting that it was drawn against one hundred bales of cotton marked R M U I 1/100.

One numbered 2131 for 38.281.20 francs, and reciting that it was drawn against one hundred bales of cotton marked R T H F 1/100.

One numbered 2138 for 38,325.70 francs, and reciting that it was drawn against one hundred bales of cotton marked R B X K 1/100.

One numbered 2137 for 37,439.40 francs, and reciting that it was drawn against one hundred bales of cotton marked R D G B 1/100.

One numbered 2132 for 37,440.20 francs, and reciting that

it was drawn against one hundred bales of cotton marked R N A M 1/100.

One numbered 2133 for 37,681.85 francs, and reciting that it was drawn against one hundred bales of cotton marked R M B E 1/100.

One numbered 2130 for 37.518.00 francs, and reciting that it was drawn against one hundred bales of cotton marked R I N O 1/100.

One numbered 2136 for 37,678.65 francs, and reciting that it was drawn against one hundred bales of cotton marked R S O U 1/100.

One numbered 2139 for 38,258.15 francs, and reciting that it was drawn against one hundred bales of cotton marked R T P N 1/100.

One numbered 2134 for 37,197.75 francs, and reciting that it was drawn against one hundred bales of cotton marked R N O I 1/100.

Please state, if you know, how said drafts happened to be drawn against Paul Chardin. Please state any and all facts you may know respecting said drafts and the cotton against which drawn which will throw any light on the question whether or not Paul Chardin had only the rights or interest in said cotton which a banker accepting drafts with bills of lading attached would have or whether Paul Chardin had other interest in or relations to said cotton.

To the thirty-first interrogatory he saith:

Referring to the drafts of one thousand bales of cotton, according to details given in this thirty-first interrogatory, I give the following correct explanation how these
690 drafts happened to be drawn on Paul Chardin: Paul Chardin, Havre, bought at different dates in 1909 cotton from Steele, Miller & Co. according to the contracts, of which I annex to this deposition true copies as exhibits No. 4 to No. 13. All of these sales have been made verbally by Mr. Linde, who was just at Havre at that time, and they were confirmed by writing always through Scheuch & Co. as agents of Steele, Miller & Co., as well to Paul Chardin as to Steele, Miller & Co., as this is usually done. The Havre buyers, when purchasing through an agent of an American shipper, does not correspond directly with the shipper. These sales have been also confirmed by Steele, Miller & Co. according to the con-

tracts, copies of which we annex to this deposition as exhibits No. 14 to No. 18. At the time these contracts were made it was understood, as this was always the case and custom, that Steele, Miller & Co. had to draw against the cotton shipped under those contracts at 60 days sight on Paul Chardin, Paris, for account of Paul Chardin, Havre, with bills of lading, insurance certificates and invoices attached. Naturally and without specifying, it was understood as a general custom that Steele, Miller & Co. had to ship against those contracts only cotton which had to be delivered against the said contracts, as Paul Chardin had not opened any credit to Steele, Miller & Co., nor had he made any special arrangement with them neither verbally nor by writing concerning those drafts, but he only had allowed drawing on his Paris firm with the purpose to pay the purchase price of his cotton this way, which is an old custom at Havre. Paul Chardin had not made any arrangement with Scheuch & Co. similar to those with the Havre banks or others, concerning the drawing of Steele, Miller & Co. on him against those contracts. Besides, I refer to similar sales by Steele, Miller & Co. to Westphalen & Co., where it was also understood that Steele, Miller & Co. had to draw on Westphalen & Co. against those delivery contracts, and where Westphalen & Co. insisted very energetically to receive the cotton for which they had drawn on him. I mention this only to show that the case of Paul Chardin was not an exceptional one.

It happened that the cotton which Steele, Miller & Co. had shipped and drawn on Paul Chardin did not arrive
691 in time to make the delivery at the time Paul Chardin needed his cotton, so purchased, and in these instances Paul Chardin asked Scheuch & Co., either verbally or by phone, if they could oblige him in delivering some of their spot cotton instead of waiting until the cotton, which was shipped to him by Steele, Miller & Co. would arrive. As Scheuch & Co. wanted to oblige Paul Chardin and as they also wanted to avoid any claim for penalty by Paul Chardin against Steele, Miller & Co. on account of the delay in delivery, they agreed to the demand of Paul Chardin and delivered to him cotton from their stock, warehoused at Havre, in exchange of the cotton in course of shipment to Paul Chardin. Scheuch & Co. were not bound at all to do this and if they would not have had a stock of cotton at Havre, wherein to find suitable cotton

for Paul Chardin according to the contract conditions with Steele, Miller & Co. and him, Scheuch & Co. would not have been able to advance any cotton to Paul Chardin. These transactions have been special transactions between Paul Chardin and Scheuch & Co., acting as merchants for their own account. The said purchases were not made at fixed prices, but on a certain basis, prices to be fixed later. This explains the differences between the drawing prices of Steele, Miller & Co. and the final settlement prices. These differences in prices have been always settled between Paul Chardin & Scheuch & Co. for account of Steele, Miller & Co. In January, 1910, Paul Chardin received directly from the steamer 1200 bales, which Steele, Miller & Co. had shipped against the said delivery contracts in drawing for 500 B. on Paul Chardin, and for 700 bales on Comptoir d'Escompte de Mulhouse for account of Paul Chardin at 3 d/s. This fact proves also that the understanding of those contracts was this, that Paul Chardin had to receive the very cotton drawn for on him or on his bank—Comptoir d'Escompte de Mulhouse—as the buyer.

Interrogatory No. 32:

It had been stated in one part of the testimony of said Linde that the various custody bills of lading referred to in previous interrogatories and covering the so-called "Texas" cotton were forwarded to you merely as "agents" of Steele, Miller and Company with instructions to exchange the same for
692 the through railroad bills of lading accompanying the various drafts drawn against said cotton. Please state whether this is true; and if not, state what is the truth in respect thereto.

To the thirty-second interrogatory he saith:

All the consignment business of Steele, Miller & Co. to Scheuch & Co. was done by the latter as merchants for their own account and not at all as agents of Steele, Miller & Co., because all the credits which the banks had opened where [were] given to Scheuch & Co. as merchants and not at all as agents of Steele, Miller & Co. Scheuch & Co. in their quality as merchants were fully responsible to the banks for those transactions, which would not have been the case if they had acted only as agents of Steele, Miller & Co.

Scheuch & Co., however, have acted as agents of Steele,

Miller & Co. in the business dealings between Paul Chardin and Steele, Miller & Co., where Paul Chardin was the actual buyer of the cotton, against which Steele, Miller & Co. had drawn for on Paul Chardin.

The custody bills of lading have never been forwarded to us as "agents" of Steele, Miller & Co., but we received same as merchants and had of course to hand them over to our banks immediately, because they had accepted the drafts against such cotton, of which they were the owners as long as they were in possession of the documents.

Interrogatory No. 33:

It was testified by the said Linde that in February or March, 1910, the said Havre banks were alarmed and held meetings about the Steele, Miller and Company cotton covered by the drafts drawn on said banks, and that he was informed of such meetings by your firm. State whether or not you gave Linde any such information, and whether or not it is true, as far as you know, that in February or March, 1910, said banks became alarmed and held any meetings in respect to said cotton covered by said drafts.

To the thirty-third interrogatory he saith:

I herewith testify that the Havre banks have never been alarmed nor have they held meetings about Steele, Miller & Co. cotton and I did not give such informations to
693 Mr. Linde. The banks have asked us occasionally on which steamer such and such cotton would arrive, as sometimes the drafts were falling due and the cotton had not yet arrived, but therefore they have never been alarmed, as the delay was nothing unusual to them. Scheuch & Co. when cabling or writing to Steele, Miller & Co. to hurry forward certain cottons have several times mentioned the names of the banks, as if they had charged us to claim, but this had been merely done by Scheuch & Co. because they believed that when Steele, Miller & Co. would attach more importance to those letters or cables. In reality never any of those banks had charged us to do this.

Interrogatory No. 34:

Do you know, or can you set forth, any other matter or thing which may be a benefit or advantage to the parties at issue in

this cause, or either of them, or that may be material to the subject of this your examination or the matters in question in this cause? If yea, set forth the same fully and at large in your answer.

To the thirty-fourth interrogatory he saith:

I do not know or remember any other matter of [or] thing which may be a benefit or advantage to the parties at issue in this cause, or either of them, or that may be material to the subject of my examination or the matter in question in this cause.

I have only to say that my depositions in answer to the interrogatories and cross-interrogatories have been given by me very conscientiously according to my best knowledge and belief, desiring to make the cause as clear as possible in accordance with the truth.

I annex herewith a copy of the general "Business Rules," signed between Steele, Miller & Co. and Scheuch & Co. in August, 1907, and which were binding for all kinds of business done together. This exhibit bears the No. 18 bis.

(Signed) FERD SCHEUCH.
(Signed) J. P. BEECHER,
[Seal] Commissioner

694 Cross-Examination of FERDINAND SCHEUCH.

First cross-interrogatory:

Are you the same Fernand Scheuch who came to America in May, 1910, and was summoned to appear before the Hon. William A. Bell, referee in bankruptcy, and who left the jurisdiction of the court without testifying?

To the first cross-interrogatory he saith:

I am the same Ferdinand Scheuch who came to the United States in May, 1910, when I was charged by Messrs. Westphalen & Co., of this city, and some other Havre cotton merchants to look after their interests in the Knight, Yancey & Co. failure. When I left Havre I had no [not] the intention to go to New Orleans for the interests of Scheuch & Co., as I learned of the seizure of the "Texas" cotton only when I arrived in New York. I stayed in New Orleans from middle of

May until end of July and have been at the disposal of every one at any day. On the 8th of June I had testified before the Hon. William A. Bell, referee in bankruptcy, giving him all explanations, he and the lawyers of the trustee, as well as any other person who was no lawyer, asked me. On the day I intended to leave New Orleans and to return to France I received another summons from the Hon. William A. Bell to appear before him the next day. As I had arranged everything to leave New Orleans on the evening of the day when I received the summons I asked Mr. Blair what I had to do, and he told me that he did not think it absolutely necessary for me to appear again before the referee in bankruptcy, but that I could leave New Orleans in all tranquility. Nevertheless, Mr. Blair had telephoned to Mr. Dufour that I was ready to appear before Hon. Mr. Bell on that day, which Mr. Dufour refused. Therefore, I left New Orleans after having said good-bye to all my friends in New Orleans. My departure was not a secret to the New Orleans people, as some of the lawyers intended to make believe, but I left with the knowledge of all my friends there, and I told even so to Mr. Elliott and Mr. Watson, who I met in the same restaurant where I took my lunch. My New York address had been given by me to Mr. Blair. I really thought that if my witness would have been necessary to anybody, there had been time enough during the two
695 and one-half months when I was in New Orleans to let me know earlier than just on the day I wanted to leave. I went from New Orleans via Chicago and the Niagara Falls to New York, to which I had forwarded directly my trunks. I intended to make a visit to some of our business friends there and to leave on the "Prinz Friedrich Wilhelm" for Cherbourg and Havre.

Second cross-interrogatory:

Are you the same Fernand Scheuch who was arrested by the United States government in the City of New York when about to embark to Paris, and placed under bond for $5,000.00 to secure your appearance on the trial of the various cases of the United States against Steele, Miller and Linde, at Aberdeen, Mississippi?

To the second cross-interrogatory he saith:

I arrived at New York on the 31st of July at night and

stopped in the same hotel where I used to stay when I passed through New York, The Imperial Hotel. The next morning at about 8 o'clock somebody knocked at my door and when I asked who was there, because I had not finished dressing, one answered "friends." I opened immediately the door and two gentlemen stepped in and said that they came from the Post Office department and that I had to follow them to that building. They showed me their official cards, but not being accustomed with the American habits, I did not understand at all for what purpose I had to go to the post office building. I asked, therefore, for an explanation, but couls [could] not get anything out of the two persons, so I finished dressing and followed them. After my arrival at the post office building I had to wait a long time before one of the inspectors came and asked me if I was a certain Ferdinand Scheuch, which I confirmed. He told me then that I was arrested, reading to me the contents of some letter, which I did not understand and which he refused to le [let] me read by myself. I cannot help to state that I thought first it was a joke or some mistake, but I learned very quickly the truth, when Marshal Henckel, who probably feared I would escape, put the hand on my shoulder to be sure of my person. I learned that I was arrested because I had to appear before the United States Court at Aberdeen, Miss., as a witness in October, 1910, and that I could
696 not leave the United States without giving a bond of $5000, and that if the bond would not be paid within 24 hours they would put me in jail, just like a criminal. I explained that I had some friends at New York, who I intended to ask to sign this bond for me, while I would cable at once to Havre to get the money from our banks. The bond was signed and in the afternoon the $5000 arrived also from Havre. Then only I was left in liberty. On 3rd of August Mr. Watson handed me again a subpoena for the U. S. grand jury, and I was again ordered to tesfy [testifiy], which I did before leaving New York. I only can say that I have been treated very badly; just like a criminal would be treated in France, while they only wanted me to appear as a witness before the court in Aberdeen in October, 1910. I want still to mention that when I left Havre in May, 1910, the Havre Chamber of Commerce handed me over a letter to the French embassador in Washington, recommanding me to him. Such letters are not

given to everybody, but only to persons who are honorably known.

Third cross-interrogatory:

If you answer yes, state whether or not you appeared at said court, and whether or not your bond for $5,000.00 was forfeited.

To the third cross-interrogatory he saith:

According to the subpoena, which I had received in New York in Aug., 1910, I went back to the States and appeared on 3rd of October before the Court at Aberdeen, Miss., as a witness. I went to the court every day and was at the disposal for about ten days, without having been asked to testify, and until all the witnesses were released. The bond of $5000 has been refunded to me by the government in April, 1911.

Fourth cross-interrogatory:

State who signed the bond for $5,000.00 to insure your appearance.

To the fourth cross-interrogatory he saith:

The bond was signed by the National Surety Company, 115 Broadway, New York.

Fifth cross-interrogatory:

If you state that a bonding company signed your bond, state who indemnified this bonding company, and at whose
697 request it was done.

To the fifth cross-interrogatory he saith:

The National Surety Company, New York, was indemnified by the cable transfer I received from our Havre banks and which I had asked for.

Sixth cross-interrogatory:

Did you have any relations, direct or indirect, with the Cotton Commission Company?

To the sixth cross-interrogatory he saith:

I was one of the sleeping partners of the Cotton Commission Company.

Seventh cross-interrogatory:

Give the whole history of the Cotton Commission Company.

To the seventh cross-interrogatory he saith:

In March, 1909, Mr. Klemeyer, of Bremen, Germany, whom I knew only by name, wrote a letter to Scheuch & Co. stating that he intended to establish a new firm in Bremen and that he would be glad if Scheuch & Co. would take an interest in this firm, as on account of the many good relations we had in the United States, he thought that this would help him to do a nice business in Bremen. Scheuch & Co. replied that they were not inclined at the moment to take any interest therein, as they just had made some investment elsewhere. When Mr. Linde came to Havre in summer 1909 we told him occasionally that Mr. Klemeyer had asked us to take an interest in a new firm in Bremen, but that we had no mind for it, as we were satisfied with our Havre business and did not care to undertake too much. Mr. Linde then tried to convince us that the idea of Mr. Klemeyer was not a bad one, Bremen being a very important place for cotton business. Besides, he said that he would try to give to Mr. Klemeyer a share if [of] their business to Bremen, as far as this would be possible on account of their already existing connections in Bremen. He even found that the Bremen business would be very attractive, so that he would be willing to take personally, as well as for Mr. Steele, some interest in the new concern, if this would be possible. We, therefore, decided to have a talk with Mr. Klemeyer, who came to Havre. After having discussed with Mr. Klemeyer the chances of business at Bremen we really thought
698 that it might not be a bad investment and therefore finally decided to take an interest in the new firm, which was established with a capital of Mk252,000. The capital had to be paid in in the following way: Mr. Klemeyer, as the only active partner of the firm, had to bring up Mk. 84,000, Mr. Schilling and myself together Mk. 84,000, and Mr. Linde and Mr. Steele together Mk. 84,000—all four as sleeping partners. The profit and the loss to be divided, after having paid to Mr. Klemeyer as a fixed salary for his work Mk. 12,000 pro anum, and after having retained 10% of the profit for reserves, as follows: Mr. Klemeyer 30%, Mr. Schilling and myself together 30%, Mr. Linde and Mr. Steele together together 30%. Before the contracts were signed Mr. Linde

found out that it might be in the interest of the Cotton Commission Company that his name and the name of Steele should not figure in the official contract, as this might prevent other American cotton shippers, competitors of Steele, Miller & Co., when known, to do business with the Cotton Commission Company. This reason seemed to be very plausible to Mr. Klemeyer and ourselves and therefore myself and Mr. Schilling took over the part of Mr. Linde and Steele under our name in the contract, while we made a personal contract with Linde and Steele, stating that they were responsible for Mk. 84,000, and they had to bear or to get 30% of profit or loss. This was not at all secret. The Commission Cotton Company started on 1st of September, 1909. The business was conducted only by Mr. Klemeyer and we were only sleeping partners, having no active part in the business. In November, 1909, we made an arrangement with the Banque de Mulhouse for a reimbursement credit of 3000 bales of cotton, to be shipped as consignments to the Cotton Commission Company, Bremen, by Steele, Miller & Co., Corinth, which transaction was fully guaranteed by Scheuch & Co. to the Baque [Banque] de Mulhouse, as if it was done for their own account. Of those 3000 bales there are 350 bales which have never arrived and which are a part of the 1550 bales missing. Scheuch & Co. lost through the Cotton Commission in the consequence of the failure of Steele, Miller & Co. Mk. 168,000.

Eighth cross-interrogatory:

699 State the date that the Cotton Commission Company began business; state with whom you were associated; state the percentage of your interest, and whether or not there was any secret agreement between yourself and Linde and Miller by which Linde and Miller were to receive a separate and greater interest.

To the eighth cross-interrogatory he saith:

I refer to my deposition under No. 7 of this cross-interrogatory, where I have replied already to this question.

There was no secret agreement and Mr. Linde and Mr. Steele had not to receive a separate and greater interest, as myself and Mr. Schilling.

Ninth cross-interrogatory:

Explain fully your relations with the various defendant banks and bankers.

To the ninth cross-interrogatory he saith:

The relations of Scheuch & Co. to the Banque de Mulhouse, Comptoir d'Escompte de Mulhouse, Societe Generale and the Credit Havrais were the following: Those banks allowed to Scheuch & Co. to draw at 60 or 90 days sight on them by drafts, which had to be accompanied by bills of lading, insurance certificates and invoices, so-called documentary drafts, issued against cotton shipped by the American firms with which Scheuch & Co. were in relations. These drafts were accepted by the said banks against delivery of the said documents, representing the cotton. Besides, and to be fully guaranteed against any fluctuations in prices, the banks were holding under their own name the future hedges, sold against such shipments, at the Caisse de Liquidation at Havre. On arrival of the cotton at Havre the banks claimed the cotton from the steamers under their own name, received it and warehoused it also under their own name, keeping it as a pledge against their acceptances. When the cotton was sold they handed over the order to deliver to Scheuch & Co. only against reimbursement of the accepted amounts. At the same time Scheuch & Co. had to deliver to the banks a purchase contract of futures, to liquidate the future sales held by those banks. The banks did not know to whom the cotton was sold, as that did not have any interest for them. The banks charged to Scheuch & Co. for the acceptance of the drafts 3/16 or 1/4% banking commission, as this is the custom in Havre.

700 Our relations with Paul Chardin were not at all the same, as he accepted the drafts, drawn on him, for his own account; not doing any similar business as the defendant banks in this case. Paul Chardin had never opened any credit to Scheuch & Co. Our relations to Paul Chardin were only such that we sold to him cotton as agents for our American shipper connections, and sometimes we sold to him spot cotton, which transactions were made by us as merchants for our own account.

Ten [tenth] cross-interrogatory:

State fully and clearly the relations between Paul Chardin and Steele, Miller & Company.

To the tenth cross-interrogatory he saith:

Paul Chardin was in relation with Steele, Miller & Co. through us as agents of the Corinth firm and he bought through us from them cotton to be shipped or delivered according to contracts under the same conditions as any other cotton merchant here is buying cotton from American shippers. Paul Chardin allowed Steele, Miller & Co. with the purpose to pay the purchase price of the purchased cotton to draw on him, at Paris, at 60 days sight with bills of lading, insurance certificates and invoices attached to those drafts, which Paul Chardin accepted against delivery of those documents representing the purchased cotton. Paul Chardin charged to Steele, Miller & Co. the usual banking commission of 3/16 or 1/4% for his acceptance of the drafts, as this is the custom when American shippers are drawing directly on the buyer.

Eleventh cross-interrogatory:

Did you represent Steele, Miller & Company in the transactions between the firm and Paul Chardin?

Annex to your interrogatories all correspondence that passed between you and Steele, Miller & Company concerning the supposed monthly delivery contract of Paul Chardin, and attach to your interrogatories all correspondence, account sales and writings of every character that passed between you and Paul Chardin. We caution you that we desire the fullest answers to this question, and you will answer same without reservation.

To the eleventh cross-interrogatory he saith:

701 Steele, Miller & Co. did not have any transactions directly with the banks, as all the credits for reimbursement against consignment shipments which we had given to Steele, Miller & Co. were opened by the said banks to Scheuch & Co. and not to Steele, Miller & Co. Scheuch & Co. therefore did not represent Steele, Miller & Co. in these transactions, but they were made by Scheuch & Co. as merchants for their own account. The transactions, however, between Paul Chardin and Steele, Miller & Co. were made by Mr. Linde and confirmed by Scheuch & Co. as the agents of Steele, Miller & Co. as far as the sale of this cotton is concerned, therefore we really represented Steele, Miller & Co. in these transactions.

There is a very distinct difference between the transactions with the banks and those with Paul Chardin.

I annex to this deposition the correspondence which passed between our firm and Steele, Miller & Co. in respect to the delivery contracts of Paul Chardin under No. 19 to No. 29 as exhibits. The contracts referring to these sales have been already annexed.

I annex further to this deposition the account sales between Paul Chardin and Scheuch & Co. concerning these delivery contracts and the cotton which had been delivered by Scheuch & Co. in replacing the delayed Steele, Miller & Co. shipments to Paul Chardin. These exhibits are numbered 30 to 46. I annex also copies of the writings between Paul Chardin and Scheuch & Co. concerning the fixing of prices of those delivery sales, which exhibits are numbered 47 to 90.

Twelfth cross-interrogatory:

When did Steele, Miller & Company begin to fall behind in their shipments?

To the twelfth cross-interrogatory he saith:

The shipments of Steel, Miller & Co. arrived always in a more or less slow way from the beginning that we have done business with that firm. But this was not extraordinary to us, because we knew by experience that it happened frequently, and since many years that cotton being shiped from the interior of Alabama, Mississippi, and even sometimes from Texas, arrived very slowly at Havre, in consequence of the congestions at the compress points and in the ports as well as in consequence of the bad railroad service in these countries. This was the understanding on our side of the delay with which the cotton arrived and all the Havre merchants and banks believed that the above explained reasons were true, therefore nobody ever suspected any irregularities in these delais [delays], otherwise nobody would have continued to do business. Only about 20th of February, 1910, we remarked that several lots of cotton shipped to us against drafts drawn on our banks during November, 1909, had not yet arrived at Havre and therefore we cabled and wrote to Steele, Miller & Co. about this, insisting that this cotton had to be hurried forward, and that we wanted all our cotton to be shipped through in a much quicker way, because the drafts

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were falling due before the cotton arrived, which caused extra interests and fees with our banks. The banks occasionally asked us in which steamers their cotton would arrive, but none of same has ever been alarmed.

Thirteenth cross-interrogatory:

State when the bank or banks began questioning you concerning said statements.

To the thirteenth cross-examination [interrogatory] he saith:

Referring to my deposition under No. 12 of this cross-interrogatory I repeat that the banks occasionally asked us verbally on which steamers their cotton would arrive, but they have never been questioning us about this in an extraordinary way. We have cabled several times to Steele, Miller & Co. duirng February, 1910, mentioning our banks and stating that we could not get further credits on account of the unusual delay with which their cotton arrived, but this was done only by our own initiative and without the knowledge of the banks, because we believed that Steele, Miller & Co. would look after our shipments more carefully if we named the banks in our cables.

Fourteenth cross-interrogatory:

State whether or not you made any exchange of custody bills of lading for through bills of lading with the defendant banks or bankers.

To the fourteenth cross-interrogatory he saith:

Scheuch & Co. made the exchange of custody bills of lading for through bills of lading with the four defendant banks and they handed also the custody bills of lading of the 994 b. of cotton of the steamer "Texas" over to Paul Chardin.

703 All these custody bills of lading have been forwarded to Scheuch & Co. by Steele, Miller & Co. without that Scheuch & Co. had ever asked for. Scheuch & Co. have been under the impression that these custody bills of lading were the continuation of the through bills of lading to replace the so-called master receipts, and according to explanations received by Steele, Miller & Co. they believed that the latter had to give a guarantee to the transportation companies in order to obtain the custody bills of lading. Out of the abt.

90,000 bales of cotton which had been shipped to Scheuch & Co. from Steele, Miller & Co. 60,000 bales have been received from the steamers on through bills of lading, therefore we did not want at all those custody bills of lading to receive our cotton, which was delivered without difficulties on the through bills of lading when arrived at Havre.

Fifteenth cross-interrogatory:

If you state yes, state fully what you said to the banks and bankers when you presented said bills of lading.

To the fifteenth cross-interrogatory he saith:

When Scheuch & Co. presented the custody bills of lading to the banks they gave the exact explanations about it which they had received from Steele, Miller & Co., stating that Steele, Miller & Co. had sent us these bills of lading to be exchanged against the through bills of lading covering the same cotton, against which Steele, Miller & Co. had drawn for on the banks for our account, and that they had received these custody bills of lading without any charge, and that they had to send back to Steele, Miller & Co. the through bills of lading of the same cotton, to be handed back to the railroads which issued same. Scheuch & Co. further stated that Steele, Miller & Co. went to all the trouble because they wanted to get their cotton shipped in a quicker way and to be sure that the cotton would really be loaded on the steamers named in the custody bills of lading. On request of the Societe Generale Scheuch & Co. wrote a letter to Steele, Miller & Co. on 8th of Decemebr, 1909, asking explanations about those custody bills of lading, and when their answer arrived, dated 23rd of December, 1909, it was communicated to the So-
704 ciete Generale and the other banks which had asked about it. All the banks and Scheuch & Co. believed that the explanations which were given by Steele, Miller & Co., and which all found very plausible, were true, and at no moment any of the said banks or Scheuch & Co. had had the slightest doubt about the authenticity of the through bills of lading, as we all had the greatest confidence in the firm of Steele, Miller & Co., and especially in Mr. Linde. If the banks or any of them would have suspected the fair dealings of Steele, Miller & Co. they would not have continued to ac-

cept any further drafts drawn by Steele, Miller & Co. for our account on said banks.

As I stated before Scheuch & Co. have received thro' [through] their banks about 60,000 bales of cotton in 1909-1910 from Steele, Miller & Co. on through bills of lading without having ever had any difficulty to receive this cotton on arrival of the steamers, while it seems to-day that most of these through bills of lading were bogus. Besides Knight, Yancey & Co. have shipped to Havre hundred thousands of bales of cotton on through bills of lading, which are said to have been bogus, and all the merchants have received their cotton from the steamers without any difficulties, so that nobody suspected the fair dealings of that firm. If the steamship companies would not have delivered any cotton on irregular through bills of lading, then these frauds would not have happened or at least would have been stopped in the beginning and Europe would not have to complain to-day the enormous losses.

Sixteenth cross-interrogatory:

Did the banks or bankers surrender to you the through bills of lading, and, if so, what did you do with said transfer bills of lading?

To the sixteenth cross-interrogatory he saith:

The banks surrendered to us the through bills of lading, according to our request, and we forwarded same back to Steele, Miller & Co., as per their instructions. The banks and Paul Chardin kept the through bills of lading of the cotton of the steamer "Texas" as a matter of precaution probably.

Seventeenth cross-interrogatory:

In the various affidavits filed in the within cases, there have been presented letters written by you to the various
705 defendants, transmitting the custody bills of lading ex SS. "Texas." Why did you deliver those bills of lading by letter and why did you not procure the surrender of the through bills of lading at the same time?

To the seventeenth cross-examination he saith:

The custody bills of lading have been always transmitted by

our office to the said banks accompanied by the same kind of letters. I don't know the reasons, why the banks did not surrender the through bills of lading of the "Texas," but I believe that it was as a matter of precaution, which will be easily understood by every prudent business man.

Eighteenth cross-interrogatory:

Were these custody bills of lading accompanied by insurance certificates or invoices?

To the eighteenth cross-interrogatory he saith:

These custody bills of lading were never accompanied by insurance certificates or invoices, as they represented only the ship's documents of the same cotton covered by the through bills of lading, which were attached together with insurance certificates and invoices to the drafts drawn on our banks and accepted by them.

Nineteenth cross-interrogatory:

If so, did you surrender invoices or insurance certificates to any of the parties?

To the nineteenth cross-interrogatory he saith:

As those custody bills of lading were not accompanied by any certificates of insurance or any other documents, we had nothing to surrender to the said parties, which were in possession of the insurance certificates covering the said cotton since the time they had accepted the drafts?

Twentieth cross-interrogatory:

In answer to Interrogatory No. 28 propounded to you by the defendant, if you state that you did not take up the drafts, state what drafts you took up and what you did with the money. Give full details and annex all documents bearing upon the subject.

706 To the twentieth cross-interrogatory he saith:

As I have already stated under No. 28 of the direct interrogatory, Scheuch & Co. did not take up the drafts of the 1550 bales of cotton missing, and furthermore Scheuch & Co. did not take up any drafts at all, because when Steele, Miller & Co. failed all our money was tied up in our banks

and we could not dispose of any of our money, being indebted to our banks for about frs. 700,000—more than our capital. Besides, as we were not indebted to Steele, Miller & Co., because they owe us over frs. 1,100,000—according to the final balance of our accounts with them, we had no funds in hand to take up any drafts. By a clerical error it is stated in the debit note we sent to Steele, Miller & Co. on 29th of April, 1910, "paid" which should read according to the truth "accepted," as we did not pay those drafts to our bankers, having had no funds in hand to do so. I do not understand the question of this interrogatory stating: ".....and what you did with the money." First, I explained heretofore very clearly that Scheuch & Co. did not take up any drafts, because all their money was tied up in our banks so that they had no funds to take up drafts, besides they were not indebted to Steele, Miller & Co., but the latter were indebted to them.

Twenty-first cross-interrogatory:

Explain fully the cotton future transaction by or through you with the defendant banks and bankers.

To the twenty-first cross-interrogatory he saith:

Concerning the cotton future transactions we had with and by the defendant banks (we have never had such transactions with Paul Chardin) I have already given a full explanation before, stating that the banks required to hold the future hedges, sold against cotton imported by us or consigned to us, under their own name as a security against any decline in prices; in other words, to avoid any speculation with the cotton drawn on them, which the banks would never have admitted. These future transactions were handled in the following way. When Steele, Miller & Co. were ready to ship a certain quantity of cotton, against which they drew on our banks, as explained before, they cabled us to
707 sell so many bales of futures, which instructions we executed in the Havre future market, having registered the future contracts under the name of the banks, on which Steele, Miller and Co. drew, with the Caisse de Liquidation (Clearing House) at Havre. Thereby we and the banks had on one side as a purchase "the cotton," against which Steele, Miller & Co. drew on our banks for 100% of the market value of the day, when they drew, and on the other

side as a hedge, being a security against any decline in prices, "the future sale" under the banks' name, so that the transaction was really covered. Now when the cotton arrived at Havre, it could either be tendered against those future sales, which we did sometimes, or it was sold on the spot to Havre merchants as soon as there was a buyer at reasonable prices. As soon as a lot of 50 or 100 bales was sold on the spot, we had naturally to buy back the future-hedge-sales, to close the whole transaction. These future purchases were of course made under the name of the bank, which held the future sales. The differences which existed in consequence of the fluctuations in cotton prices on those future transactions were either booked by the banks to our credit, when it was a profit, or to our debit, when it was a loss. On the other side the losses or profits on those future transactions were made up by the profits or losses on the actual cotton, so that in reality there were no losses or profits caused in consequence of the future transactions. Scheuch & Co. credited or debited Steele, Miller & Co. in the same way for any losses or profits on those future transactions and on the sales of their cotton. This is the regular course how business is done at Havre by all cotton firms, which don't speculate and which want to do a legitimate business. As I mentioned already before, Scheuch & Co. have never had such future transactions with Paul Chardin, who hold the futures against his purchases of course by himself.

Twenty-second cross-interrogatory:

Annex to these interrogatories statements of the cotton future transactions showing the profit and loss on said transactions and explain to whom the profits were paid and by whom the losses were paid. Annex also a statement of your dealings in Steele, Miller cotton with the defendants
708 and particularly as follows: (1) Give a statement of the drafts accepted by Paul Chardin, together with the method of payment or discharge of said draft, together with all charges of interest or commission paid to said Paul Chardin, either for acceptance or interest upon the amounts. (2) Give a statement of the drafts accepted by Credit Havrais, together with the method of payment or discharge of said drafts, together with all charges of interest or commission paid to said Credit Havrais, either for acceptance

or interest upon the amounts. (3) Give a statement of the drafts accepted by Bank of Mulhouse, together with the method of payment or discharge of said drafts, together with all charges of interest or commission paid to said Bank de Mulhouse, either for acceptance or interest upon the amounts. (4) Give a statement of the drafts accepted by the Comptoir d'Escompte de Mulhouse, together with the method of payment or discharge of said drafts, together with all charges of interest or commission paid to said Comptoir d'Escompte de Mulhouse, either for acceptance or interest upon the amounts. (5) Give a statement of the drafts accepted by the Societe Generale, together with the method of payment or discharge of said drafts, together with all charges of interest or commission paid to said Societe Generale, either for acceptance or interest upon the amount.

These statements should begin of date September 1, 1909, and continue up to the time that you ceased handling Steele, Miller cotton.

Attach copies of all correspondence or cables that you may have had with Steele, Miller & Company concerning the failure to deliver cotton, and also all correspondence that you may have had with the Compagnie Generale Transatlantique, or any of its agents, from February 1, up to and including your departure from Europe. You are particularly cautioned that in testifying as to the transactions of Paul Chardin,
709 you are to give full and complete details, together with every letter ever received by you or through you, or written by you or delivered through you, together with every account sale, invoice, insurance certificate, and in fact you are to give the entire transaction, and you are to let the authority taking these depositions examine same to the end that same can be verified.

To the twenty-second cross-interrogatory he saith:

I annex to this deposition all the required statements of the future transactions made against the business with Steele, Miller & Co. since the 1st of September, 1909, up to the time we ceased handling their cotton, as exhibits No. 91 to No. 659. In reference to these accounts I beg to repeat that any losses or credits were booked by the banks on our accounts against the liquidation of the actual cotton for which Steele, Miller & Co. had drawn on our banks. Besides these losses

or profits were booked by us on the accounts of Steele, Miller & Co. in the same way as the banks did. I annex to this deposition a statement of the drafts accepted by Paul Chardin for his own account, as he never accepted any drafts for our account. Exhibit No. 660.

I annex to this deposition a statement of the drafts accepted by the Credit Havrais under exhibit No. 661.

I annex to this deposition a statement of the drafts accepted by the Bank of Mulhouse under exhibit No. 662.

I annex to this deposition a statement of the drafts accepted by the Comptoir d'Escompte de Mulhouse under exhibit No. 663.

I annex to this deposition a statement of the drafts accepted by the Societe Generale under exhibit No. 664.

The payment or discharge of those drafts with four said banks were effected by Scheuch & Co. when the cotton, corresponding with the drafts which were drawn for, was sold on the spot or delivered on futures; in the way that the banks received them the money to cover those drafts against which they gave the cotton free. The interests were the usual interests counted by any banks at Havre, varying according to the official rate of interests of the Bank of France.

710 The drafts drawn on Paul Chardin for his own account as buyer of the cotton, were discharged by the cotton he received from Steele, Miller & Co. against his delivery contracts. And in the special cases where Scheuch & Co., in order to oblige Paul Chardin, had delivered to him of their cotton in stock at Havre, agreeing to take in exchange the cotton which Paul Chardin expected from Steele, Miller & Co., those drafts were discharged by the cotton delivered to him by Scheuch & Co., as a matter of accommodation to Paul Chardin.

I annex to this deposition all the correspondence by letter or cable Scheuch & Co. has had with Steele, Miller & Co. from February 1st, 1910, to my departure from Europe in the beginning of May, 1910, as exhibits No. 665 to No. 671, referring to the delay with which their cotton arrived.

Scheuch & Co. have not had any correspondence with Compagnie Generale Transatlantique between February 1st, 1910, up to my departure from Europe. Referring to the transactions of Paul Chardin with Steele, Miller & Co., I can only repeat that the understanding of Paul Chardin and ours was

such, that Steele, Miller & Co. had to draw only on Paul Chardin against cotton, which was to be delivered against those delivery contracts, as otherwise Paul Chardin would not have allowed those drafts, as he did not intend to open any other credit for reimbursement to Steele, Miller & Co. The transactions, which took place later on account of the delay in shipping thro' the cototn drawn for, were merely transactions between Scheuch & Co. and Paul Chardin to oblige the latter, and they would not have been possible if Scheuch & Co. would not have had a big stock of cotton at Havre, in which event Paul Chardin would have been forced to await the cotton shipped to him. If Steele, Miller & Co. and Mr. Linde have understood these transactions in another way, then they have made a mistake, which I regret. It is also a fact that it was understood verbally that our classers should on arrival of the cotton shipped by Steele, Miller & Co. to Paul Chardin look over the cotton and that in case of inferior outturn of some bales or so, Steele, Miller & Co. had to replace such cotton thro' us instead of going to
711 arbitration to Bremen. But all this does not change the original understanding of these transactions, that Paul Chardin was the buyer of that cotton, which he had paid for in accepting and paying those drafts on him. I repeat that Westphalen & Co. had bought cotton under similar delivery contracts from Steele, Miller & Co. as Paul Chardin, and they insisted upon receiving exactly the cotton which was drawn for on them just like on Paul Chardin. Further, Steele, Miller & Co. had sold to other Havre concerns thro' us as agents deliveries of cotton, but without stipulating any drawing on them or banks, and in these cases of course there were no drafts and the cotton was delivered by us for account of Steele, Miller & Co. to those buyers.

Twenty-third cross-interrogatory:

Are you aware that the operations of Steele, Miller & Company were transferred from Havre to Bremen and there conducted under the Cotton Commission Company?

To the twenty-third cross-interrogatory he saith:

I have not been aware that the transactions were transferred from Havre to Bremen, where they were conducted by the Cotton Commission Company. Steele, Miller & Co. more-

over had other connections, as I believe, at Bremen and elsewhere in Europe besides the Cotton Commission Company. If Steele, Miller & Co. would have had the intention to transfer the transactions from Havre to other points in order to give Havre a preference, then they would not have asked us so often for further bank credits, but as we could not or we did not want to take further engagements with them, until a good deal of the running engagements were liquidated, they probably filled our engagements, which were the eldest, in order to get new reimbursement credit later on and not at all with the intention to give us a preference. This is the idea, I have made up by myself, in considering the way how Steele, Miller & Co. have acted, according to the informations, which I have heard last summer in New Orleans. Furthermore, if Steele, Miller & Co. would have had the intention to give Scheuch & Co. a preference, they would have had time enough since September, 1909, when Mr. Linde heard for the first time of the frauds, to get us out and to prevent
712 us from any loss, but this was not at all their intention, in spite of the friendly relations we had with Mr. Linde, as they continued to increase our engagements up to end of February, 1910, at which time we did not want to take further engagements until a large part of the running ones would have been liquidated. I think that this is the best evidence that there cannot be any question of intended or voidable preference, as neither Steele, Miller & Co. intended to give us any preference, nor did we ever ask for any preference, but the cotton we have received and the cotton, which has been arrested on board of the steamer "Texas," has been shipped by Steele, Miller & Co. by their own will in execution of the engagements they had with us or our banks in consequence of the drafts they had drawn on our banks and which have been duly paid by the latter, being therefore the owner of the cotton. Scheuch & Co. have never received any cotton from Steele, Miller & Co. without having paid for it the full value, and therefore what they or their banks received and what their banks have to receive as so called "Texas" cotton is not at all a preference but the property of the banks, which accepted the drafts and which paid those drafts.

Twenty-fourth cross-interrogatory:

Explain fully why you were willing to embark upon a new

venture in Bremen when Steele, Miller & Company owed so much cotton to Havre.

In the foregoing depositions, whenever we use the words "banks and bankers," we refer to Credit Havrais, Societe Generale, Paul Chardin, Comptoir d'Escompte de Mulhouse and Bank de Mulhouse, and in answering the questions, you will answer concerning the aforesaid.

To the twenty-fourth cross-interrogatory he saith:

As I explained fully already in reply to previous interrogatories and cross-interrogatories, the Cotton Commission Company was established by Mr. Klemeyer and by his own initiative, and Scheuch & Co. had only agreed on the demand of Mr. Klemeyer to take a financial interest in that company, because Mr. Klemeyer did not have capital enough of his own.

713 Mr. Klemeyer, whom I knew only by name, as I know many persons of the cotton trade in the world, could have addressed himself as well to any other firm or individual, to obtain the capital, which he wanted, and it was a pure incident, that he asked us. But nevertheless if Mr. Linde would not have succeeded to convince us, that, on account of the many good relations Mr. Klemeyer and Scheuch & Co. had in the United States, this would become a very good and profitable investment, we probably would not have taken any interest in that concern, because we were very satisfied with the good result of our Havre business, as we did here the largest agent's business of all. The establishment of the Cotton Commission Company had really nothing to do at all with the business of Steele, Miller & Co., as this firm had a very good connection in Bremen, with which they did a large business, and Mr. Linde only promised to give a part of his Bremen business to the new firm, if possible, and in case that he and Steele would get a part of interest in that firm. After having herewith given a true statement of the origin of the Cotton Commission Company, I must protest very energetically against the expression used in this cross-interrogatory, viz: "....to embark upon a new venture.." and I want to state very clearly, that the members of the firm of Scheuch & Co., Mr. Schilling and myself, have never been nor or they "ventures," but they have always been and are still to-day most honest business men, who have been robbed and ruined by American venturers, because they had unfor-

tunately too much confidence in the firm of Steele, Miller & Co. The firm of Scheuch & Co. enjoyed always the best reputation at Havre, and wherever they have done business. The firm during its existence since 1901 has never had any lawsuit neither in Havre or elsewhere, in spite of the very large business they have done, and this is the first time, that we are involved in such proceedings.

When Scheuch & Co. accepted the proposition of Mr. Klemeyer, they did not believe to embark upon a new venture, but they thought that it might be a good investment of their capital, without running any risk. And their idea was right, because the Cotton Commission Company would have made about Mk. 250,000 net profits during the first season, if Steele, Miller & Co. and Knight, Yancey & Co. would not have failed. I think that this cannot be called a
714 "venture"!!! Furthermore, when the Cotton Commission Company was founded Steele, Miller & Co. did not owe us any cotton nor have they ever owed us any cotton excepted the 1550 bales finally missing and the cotton arrested on board of "Texas." We have been always under the impression that the through bills of lading attached to the drafts represented the cotton, which we believed, was shipped at the time of the dates of those through bills of lading, otherwise the drafts would not have been accepted. Therefore, even if at the time of the foundation of the Cotton Commission Company there had been cotton from Steele, Miller & Co., which had not arrived at Havre, but which we thought en route, we did not consider this at all, that Steele, Miller owed us any cotton, believing without the slightest suspicion that all our cotton, covered by those through bills of lading was on the way to Havre. If we would not have had this belief we would surely not have continued to do business with them.

I think that all these facts are the best proof of the good faith of the firm of Scheuch & Co. and their banks in the said transactions with Steele, Miller & Co.

Referring to the last paragraph of this interrogatory, I beg to call the attention to it, that in my depositions I have always made the difference between the said four banks and Paul Chardin, who is not a banker.

Twenty-fifth cross-interrogatory:

In your testimony given before the Hon. William A. Bell, special master, on June 8, 1910, you were asked this question:

"Q. Can you recall any cases when you have received, other than the transactions you referred to, port bills of lading in exchange for through bills of lading with the same marks for the same cotton?

A. I don't quite understand the question.

Q. I mean is is [it] customary or usual in the cotton trade for a man to discount his drafts, to accept a draft with the through bill of lading attached, and to receive ninety days after that a port bill in substitution of it?

A. No, I don't know.

Q. It is unusual, isn't it?

A. I don't know.

Q. Did you ever do it before?

715 A. No.

And again you were asked the question:

"Q. Before that, you did tell me that you had never heard, in your experience, of the substitution of a port bill for a through bill, in Europe, for cotton shipped from this country?

A. I can tell in my office.

Q. In your office, I mean?

A. No, sir.

Q. You have never heard of it before?

A. No, sir."

Please state whether that statement was made by you and is correct.

To the twenty-fifth cross-interrogatory he saith:

Referring to the statement, which is repeated in this cross-interrogatory as having been made by me before the Hon. William A. Bell, on 8th of June, 1910, I believe that this statement, as far as I can remember to-day, is correct.

(Signed) FRED SCHEUCH.

(Signed) J. P. BEECHER,

[Seal] Commissioner.

716 City of Havre,

Republic of France. ss.

I, J. P. Beecher, Vice Consul of the United States of America at Havre, France, do certify that Ferdinand Scheuch,

the witness, personally appeared before me on the 11th day of September, 1911, at 2 o'clock in the afternoon, at the Consulate of the United States at Havre, in the Republic of France, and, after being duly sworn, to testify the truth, the whole truth, and nothing but the truth, did depose to the matter contained in the foregoing deposition, and did, in my presence, subscribe the same and certify to the authenticity of the exhibits. I certify that I have subscribed my name to each half sheet thereof, and further certify that according to cable instructions sent to Messrs. Scheuch & Co., of Havre, France, on September 4, 1911, by J. P. Blair, attorney, the attestations of each exhibit has, (in view of their great number). been waived.

Witness my hand and official seal the day and year above written.

(Signed) JOHN PRESTON BEECHER,
Vice Consul of the United States
of America, at Havre, France.

Deposited in the postoffice at Havre, France, this 13 day of October, 1911.

(Signed) JOHN PRESTON BEECHER,
[Seal] Vice Consul of the United States
of America at Havre, France.

(Sixteen $2.50 American Consular Service Fee)
(Stamps, each stamped across face with red ink.)
(11 Sep. 1911.)

Consular fee	$40.00
Services of clerk for copying verifying accounts, etc. . . .	35.00
	$75.00

717 DEPOSITION OF ALBERT SCHILLING, TAKEN UNDER COMMISSION ISSUED OUT OF THE CLERK'S OFFICE UNITED DISTRICT COURT, EASTERN DISTRICT OF LOUISIANA, ON JULY 17TH, 1911, IN ABOVE ENTITLED AND NUMBERED CAUSE, OFFERED ON BEHALF OF THE SOCIETE GENERALE, ONE OF THE DEFENDANTS.

Filed October 24, 1911.

United States District Court, Eastern District of Louisiana.

J. A. E. Pyle, Trustee,
vs. No. 14,242
Texas Transport and Terminal Company, et als.

Deposition of witnesses, produced, sworn and examined the 2nd day of October, in the year one thousand nine hundred and eleven, in the City of Havre, Republic of France, under and by virtue of a commission issued out of the District Court of the United States holding sessions in and before the Eastern District of Louisiana in a certain cause therein pending and at issue, wherein J. P. E. Pyle, trustee, is complainant, and the Texas Transport and Terminal Company, et als., are defendants:

ALBERT SCHILLING, of 25 Rue de la Bourse, Havre, France, 35 years of age, being duly and publicly sworn, pursuant to the directions hereto annexed, and examined, doth depose and say as follows:

Interrogatory No. 1:

Please state your name, age, residence and occupation. How long have you been so occupied?

To the first interrogatory he saith:

My name is Albert Schilling, 35 years of age. My residence is Le Havre, France, where I am established as cotton merchant and agent since 1901, for my own account, under

the firm of Scheuch & Co.. having as partner Mr. Ferdinand Scheuch.

Interrogatory No. 2:

If, in answer to previous questions, you have stated that you are a member of the firm of Scheuch and Company,
718 please state when said firm was organized, its business domicile and the nature of its business.

State also the amount of its capital and the extent of its business in the years 1908, 1909, and 1910 down to the failure of Knight, Yancey and Company and Steele, Miller and Company.

To the second interrogatory he saith:

The firm of Scheuch & Co. was organized on the 15th of September, 1901, according to a contract between myself and Mr. Ferdinand Scheuch, which has been duly deposited at the Court of Commerce at Havre, France, and regularly registered.

The nature of business of Scheuch & Co. was merchant's agent's business especially in cotton.

The firm of Scheuch & Co. started with a capital of frs. 50,000 in 1901, and while the business was only a small one in the beginning it was growing rapidly later on in consequence of the good and many relations which Scheuch & Co. had built up in the United States and at Havre. Scheuch & Co. were the agents of a great many first rate American shippers, amongst whom I only want to name the following, the following firms.

MM. Pferdmenges Preyer & Co., Liverpool, New Orleans, etc.
MM. Alexander Sprunt & Co., Wilmington, N. C.
MM. Harriss Irby Cotton Company, Oklahoma City, Okla.
MM. Tom B. Owens & Co., Fort Worth, Texas.
Reagan Bale Company, Houston, Texas.
MM. Inman & Company, Augusta, Ga.
MM. Ispy Cotton Company, Savannah, Ga.,

and many others, for which firms Scheuch & Co. did quite a large business at Havre either as merchants or as agents.

The extent of the business of Scheuch & Co. was the following:

During the season 1907-1908 abt. 90,000 bales cotton
During the season 1908-1909 abt. 155,000 bales cotton
During the season 1909-1910 abt. 130,000 bales cotton

All the business done by Scheuch & Co. was only commission business either as agents or as merchants. The firm never speculated, therefore all the money we made was "commission," earned by our personal activity and assiduous work. Neither Mr. Scheuch nor myself spent much money for our personal expenses or for our families, but we both left all our yearly profits in our firm, believing that it could not be placed in a better way, as we were both very prudent in all our dealings and none of us ever speculated. Our capital
719 was therefore growing every year and the firm of Scheuch & Co. would have had ever [over] frs. 1,000,000 capital in 1910, if Steele, Miller & Co. would not have failed.

Mr. Scheuch and myself are both married. Our wives did not have and have not any personal fortune and have nothing to expect from their parents. Therefore and as we left every cent of our fortune in our firm, we have lost all we had and owe still very large amounts to our bankers.

Interrogatory No. 3:

Did Scheuch and Company sustain any financial losses by reason of the failure of Knight, Yancey and Company or of Steele, Miller and Company. If yes, to what extent was its capital impaired by such losses?

To the third interrogatory he saith:

Scheuch & Co. did not sustain any substantial loss by the failure of Knight, Yancey & Co., however we lost by the failure of Steele, Miller & Co.; how things stand to-day, over frs. 1,400,000—that is to say, not only all our capital but still about frs. 700,000—more, which amount we owe to our banks and creditors. I call the special attention to this fact because from the testimony of Mr. Linde it looks as if Scheuch & Co. were not loosing much by the failure of Steele, Miller & Co., which is a big mistake. It was impossible for

Mr. Linde to give any exact amounts concerning our losses without having the accounts of all the dealings with Scheuch & Co. in hands. I can only repeat that the firm of Scheuch & Co. and Mr. Scheuch and myself are completely ruined thro' the fraudulent practice of Steele, Miller & Co.

Interrogatory No. 4:

Was Steele, Miller and Company of Corinth, Mississippi, a customer of your firm? If yes, please state when your firm began to do business with Steele, Miller and Company.

Please explain fully your relations to Steele, Miller and Company and how your business transactions with that firm were conducted.

720 To the fourth interrogatory he saith:

Steele, Miller & Co. was one of the many firms of the South with which Scheuch & Co. were in business relations and which they represented at Havre. Those relations were beginning in September, 1907, when Mr. Linde, who had been working formerly as a clerk in our office and who was afterwards employed in the office of Knight, Yancey & Co., Birmingham, Ala., was engaged by Steele, Miller & Co. as a clerk. We were selling for Steele, Miller & Co. cotton as their agents, buying also occasionally cotton from them for our own account, just as we did with all our American connections. Mr. Steele and Mr. Miller were unknown to our Havre friends, but Mr. Linde was very well known at Havre by all our customers. He was considered by everybody and especially by ourselves as a very active, intelligent, honest and well educated young man, of whom we had the highest opinion and in whom we had the greatest confidence. When he entered with Steele, Miller & Co. we were very glad to do business with that firm, and in consequence of the reasons give before us we were able to sell for them during the first season in 1907-1908 about 11,000 bales of cotton, which was a very good result for the start. As all this business came out very satisfactory to all the buyers, we were very pleased to see this business increasing in 1908-1909 to 42,000 bales of cotton. As we and everybody were very satisfied with the business in every respect, (we had done all that business as agents and only little as merchants,) we had no reason at all to change the manner how this business was conducted. At the end of

1908 Steele, Miller & Co. proposed us by cable to take charge of some consignment business, which we accepted with pleasure, as we had no reason at all to refuse it. These consignment-shipments were done in the usual way and on usual conditions. We opened a credit for reimbursement with one of our Havre banks, allowing Steele, Miller & Co. to draw for our account either at 60 or 90 days sight on the usual cif & 6% terms, bills of lading and insurance certificates attached to the drafts, as this is the custom in the cotton trade; further for having full security against any market fluctuations we sold as a hedge "futures" against those consignments shipments, which were generally held by the Havre banks, on which the drafts were drawn against those trans-
721 actions. Havre banks make it a condition to hold those futures otherwise they don't accept any large lines of business. As I stated before we were very satisfied with the agent-business, we had done for Steele, Miller & Co. during the first two seasons, and therefore we had no reason at all to solicit their consignment-business or to change in any way the manner of handling this business, but in view of our good relations and the confidence, we had in them and especially in Mr. Linde; whom we considered as an honest friend of ours, we had accepted to take charge of some consignment-shipments, for the outturn of which we were of course fully responsible to our bankers. Mr. Linde came over to Europe during summer 1909 and while here in Havre he declared one day, that he and his firm had decided to do all the Havre business in future in the way to consign the cotton to Havre and to sell it after arrival on the spot or to fulfill the delivery contracts; which may be sold beforehand to Havre people, out of those consignments; if not otherwise understood with the buyers. Mr. Linde explained as a reason of this changement, that they wanted to get all the profit out of their cotton themselves; as well for grade and staple as for weight; which was not always possible in selling their cotton on cif & 6% terms. He then asked us if we would like to take care of this kind of business, on which question we replied that we were rather against such a proposition, because it would necessitate more work and much trouble as heretofore and heavier office expenses as well as very important bank credits; which we did not need ordinarily for our agent-business. We also mentioned to Mr. Linde that we had made a nice fortune out of our agent-busi-

ness and we did not care at all to undertake the enormous work and trouble; which would be caused by the new intended system of consigning all the cotton. Mr. Linde then declared that if we would not or could not accept his proposition, he and his firm had decided, to open an own branch office under their name at Havre, and consequently we would loose all their business; which he should regret; but what he could not prevent, because they had to look first after their own interests. After such a definite declaration Mr. Scheuch and I thought, we could not do otherwise as to accept the consignment-proposition; as we did not want to loose the
722 business with Steele, Miller & Co.; which firm we considered as one of our best American connections and in which we had the utmost confidence; because Mr. Linde, a partner of the firm, was known to us as an honest man, who, no doubt, would watch over the business and also over our interests. Besides Mr. Linde had told us, that they had made much money during the first two seasons and that he considered his firm worth about $300,000—and that they had bought the Columbus Compress and were building a new cotton compress at Corinth for their own account. All these informations increased our confidence in that firm. The consignment-business was conducted in the above mentioned way and on arrival of the cotton, it was received directly from the steamer by the banks, which accepted the drafts, and warehoused in their name and the cotton was only given free, when the banks had received the necessary funds to cover the amounts of the drafts accepted by them. Scheuch & Co. were attending to the classing; selling and delivering of the cotton. This is the usual way in which this kind of business is handled at Havre.

Interrogatory No. 5.

During the period covered by your business relations with Steele, Miller and Company, did you have any arrangements with any banks at Havre to accept drafts drawn against cotton imported by you? If so, please state in a general way what those arrangements were and give the names of the banks.

To the fifth interrogatory he saith:

Scheuch & Co. had arrangements with the banks at Havre to accept drafts drawn against cotton imported by them. The

banks with which we were working are the following: Banque de Mulhouse, Comptoir d'Escompte de Mulhouse, Credit Havrais, Societe Generale and Barrie Chalot & Co. Those banks allowed Scheuch & Co. to draw on them at 60 or 90 days sight against cotton, which Scheuch & Co. had bought in the United States or which was consigned to them. The drafts had to be accompanied by bills of lading and insurance certificates and copies of invoices, which documents remained in the possession of the banks against their acceptance of those drafts. As mentioned already before the banks held as a security against any market fluctuations the future-
723 hedges under their own name, which were sold against those imports or consignments. The banks charged to Scheuch & Co. 1/4% or 3/16% banking commission for the acceptances. Besides, they charged a small commission for holding the hedges.

Interrogatory No. 6:

If, in answer to previous interrogatory, you have stated you had such arrangements with the Bank of Mulhouse, the Societe Generale, the Comptoir d'Escompte de Mulhouse, and the Credit Havrais, please state, if you have not already done so, what limit was placed by each bank upon its engagements to you.

To the sixth interrogatory he saith:

The limits, which were placed by each bank upon its engagements to Scheuch & Co., were the following:

Banque de Mulhouse up to November, 1909, allowed 5000 bales reimbursement credit, which was increased to 10,000 bales afterwards.

Societe Generale limited the reimbursement credit to 5,000 bales.

Credit Havrais increased the limit of reimbursement credit in the season 1909-1910 from 5000 bales to 8000 bales.

Comptoir d'Escompte de Mulhouse increased the limit of reimbursement credit from 5000 b/c to 10,000 bales during 1909-1910.

Barrie Chalot & Co. allowed 5000 bales reimbursement credit.

Interrogatory No. 7:

What knowledge or information did any of said banks have

in respect to your relations with Steele, Miller and Company or your business arrangements or dealings with said firm?

To the seventh interrogatory he saith:

The banks in question did not have any knowledge or information in respect to our relations with Steele, Miller & Co. or our business arrangements or dealings with said firm. All the reimbursement-credits were opened for account of Scheuch & Co. and never for account of any American shipper.

Interrogatory No. 8:

During the said period covered by your business relations with Steele, Miller and Company, state in a general way the number or extent of shipments of cotton by said firm
724 which were taken and held by said banks, through acceptance of drafts drawn against the cotton so shipped. Up to the time of the failure of Steele, Miller and Company, state whether or not Steele, Miller and Company had fulfilled their obligations in respect to such drafts and shipments of cotton.

To the eighth interrogatory he saith:

During the said period covered by our business relations with Steele, Miller & Co., the said banks accepted documentary drafts for about 90,000 bales of cotton shipped in the way of those consignments. Steele, Miller & Co., up to the time of the failure had always fulfilled their obligations in respect to such drafts and shipments of cotton, with the exception of the 1550 bales, which are finally missing, (that is to say they had been shipped, but were taken back at New Orleans by some banks or firms there when Steele, Miller & Co. failed,) and the arrested, "Texas" cotton.

Interrogatory No. 9:

It has been testified in this case by C. H. G. Linde, a member of the firm of Steele, Miller and Company, that in the latter part of September, or early in October, 1909, he learned for the first time that the bills of lading attached to the drafts drawn on said banks by his firm were forged or bogus. Please state whether after October 1, 1909, said firm continued to draw, as theretofore, drafts on said banks with bills of lading attached purporting to represent the cotton described in the

drafts? Was there any decrease, or was there any increase in the number and amount of said drafts?

To the ninth interrogatory he saith:

Steele, Miller & Co. continued after 1st of October, 1909, to draw as theretofore documentary drafts on the said banks with through bills of lading attached, purporting to represent the cotton described in the drafts. There was an increase in the number and amount of said drafts.

Interrogatory No. 10:

Was there any increase or decrease in the number of said drafts in January and February, 1910?

To the tenth interrogatory he saith:

725 There was an increase during January and February, 1910, in the number of said drafts and nearly all our limits with our banks were reached in February, 1910. While the unliquidated engagements with Steele, Miller & Co. were in September, 1909, about 15,000 to 20,000 bales, they were increased up to the failure of Steele, Miller & Co. to about 45,000 bales.

Interrogatory No. 11:

State what efforts, if any, were made by Steele, Miller and Company or the said Linde to have your engagements d'importation with said banks or any of them increased, so that Steele, Miller and Company might increase the number and amount of their drafts against said banks or some of them. Answer fully.

To the eleventh interrogatory he saith:

I refer to my deposition under No. 4, where I have given already full details in regard to the new business method Mr. Linde had proposed to us during the summer 1909, and by which all cotton for Havre should be consigned, with the exception of some sales to Westphalen & Co. and Paul Chardin. This of course meant an enormous increase of our "engagements d'importation" from that time during the whole season. Steele, Miller & Co. cabled us very often and especially after September, 1909, until March, 1910, asking for new reimbursement-credits, and we gave them as much reimbursement credits with our various banks, as the limits, we had, allowed

to do. When Mr. Linde was at Havre in January, 1910, he asked us for further credits, explaining that they could not sell any of their cotton at reasonable rates elsewhere, while they had to buy daily large quantities of cotton in the territories they covered in Mississippi, which they wanted to ship to Havre, the best market for that kind of cotton. We replied to Mr. Linde that our banks credits were limited, and besides, that we thought it wise not to increase too much our engagements d'importation at the moment, because it was very hard to sell freely any cotton on the spot, on account of the heavy stocks of cotton at Havre. Anyhow, we were glad enough to give them some further reimbursement-credits, because we wanted to oblige them, so they could move the cotton which they had to buy in the interior according to the explanations of Mr. Linde.

726 Interrogatory No. 12:

It has been testified by the Linde that in March and April his firm's shipments of cotton to Havre under drafts drawn against said Havre banks were blocked; please state why, if you know, Steele, Miller and Company could not at that time draw any more drafts on said Havre banks. State whether or not at that time the drafts already drawn against cotton undelivered had reached the limit of your engagements d'importation with said banks.

To the twelfth interrogatory he saith:

Our "engagement d'importations" with Steele, Miller & Co. were very heavy, when they asked again during February, 1910, for further bank reimbursement-credits. We did not want to increase any more these engagements, because we had about 20,000 bales unsold cotton on hand at Havre and abt. 25,000 bales were on the way to Havre, which made totally about 45,000 bales of cotton for sale up to the end of the season. We thought that this would be largely sufficient and we could not reasonably undertake to charge us with more cotton, even if our banks would have been willing to increase the limits, which were almost reached at that time. This was the reason why we did not care to open further credits to Steele, Miller & Co.

Interrogatory No. 13:

State when and under what circumstances you learned for

the first time of the use by Steele, Miller and Company of forged or bogus bills of lading. If you answer that this information was given you by said Linde, please state when and where and state fully and in detail what passed between you and Linde on that occasion.

To the thirteenth interrogatory he saith:

Mr. Linde arrived at Havre on 10th of March, 1910, with the intention to stay here during the summer and to watch personally the liquidation of their consignment-shipment, as he had told us in January when he left Havre. The first thing, what Mr. Linde asked us, was, further bank credits, telling us that his firm had bought very large lines of splendid cotton, which they preferred to ship to Havre, instead of selling it to other ports, which could not pay the full prices for it. We told to Mr. Linde, that we would be pleased to get
727 this cotton, but that it would not be reasonable for us to increase our imports of cotton, having about 45,000 bales on hand, which we judged sufficient for the moment. Then we were talking with Mr. Linde about the delay with which his shipments were arriving at Havre, telling him, that, if his firm was unable, to look after their shipments in a better way, so to get them thro' much quicker, it would be impossible for us, to undertake again such a large business. Mr. Linde repeated then his explanations about the bad railroad service in the State of Mississippi and the congestion of the port of New Orleans, especially during the high season, as the reasons of the delay. We insisted upon having the steamer names, on which our outstanding cotton would arrive. He declared that all our cotton was in New Orleans, either loaded already or to be loaded, without further delay, and that everything would be at Havre before the end of April. He gave us also several steamer names. We were then speaking about the exchange of bills of lading, asking him explanations how this was done. He gave us the same reply as before, stating that this was a great favor the steamship companies were giving to his firm, and that his firm had to give a full guarantee to obtain the custody bills of lading until the through bills of lading were coming back.

He added to this explanation that his firm went to all this trouble only to be sure that their cotton would leave in a quicker way and on the steamers named in those custody bills

of lading. We then told him that we thought it might be well for us to write directly to the railroad and steamship companies and to ask them to hurry forward the cotton much quicker as heretofore, telling them that otherwise business would be impossible in future. Mr. Linde did not object to it, but he asked us to come with him to his hotel. There he took us to his room and after having made us swear not to tell to anybody what he intended to confide to us, he told us that his firm had used falsed through bills of lading, of which he had learned only, when he had returned to New York in September, 1909, and that Mr. Miller had done this alone, that he and Mr. Steele were guiltless and that they had done all since that time to prevent that anybody would
728 lose any money by his firm. He endeavored to convince us that it had been only a passing squall and that we could sleep in all tranquility and that we would be in possession of all our cotton before end of April. After the confession of Mr. Linde we had not to change, what we had said to him before concerning the desire to get our cotton in a quicker way, neither had we to threaten him, as he told us by himself that all our cotton was on the way and would arrive here before the end of April. Mr. Scheuch and I have discussed for a long while in our conscience, if we should communicate this matter to our banks, but as we had the conviction, that Mr. Linde was sincere in telling us that there was no reason for us to be anxious, we thought it preferable not to trouble our bankers with this matter, who might have feared, that all was lost. Mr. Linde told us that he would not have told us anything about it, but that he had feared after the conversation we had had together in our office, that we might write to the steamship or railroad companies asking explanations about the exchange of through bills of lading or the delay of their shipments, which would have thrown a bad light upon his firm. We have not told to anybody a word about what Mr. Linde had said to us until October 25th, 1910, when Mr. Scheuch came back from Aberdeen and when we believed not to be bound any longer to the word we had given to Linde, as he himself had broken it in the meantime.

Interrogatory No. 14:

Prior to said confession by the said Linde, had you known or suspected that Steele, Miller and Company were using

bogus bills of lading or were practicing other frauds in their business dealings with you or others?

To the fourteenth interrogatory he saith:

Prior to the confession of Mr. Linde on 10th of March, 1910, I never have known or even suspected that Steele, Miller & Co. had been using bogus bills of lading or were practicing other fraud in their business dealings with us or other firms. If we would have had the slightest idea we would not have continued to do business with them, and we would not have increased our engagements with them from
729 about 20,000 bales in September, 1909, to about 45,000 bales at the time they failed.

Interrogatory No. 15:

Did you reveal the information received as aforesaid from Linde to any of the said Havre banks or to any one else? If you answer no, state why you kept silent.

To the fifteenth interrogatory he saith:

I did not reveal the information received from Mr. Linde neither to any of our banks nor to anyone else, because first I had given my word of honor to keep silent, and besides I was convinced, that it had been only a temporary embarrassment.

Interrogatory No. 16:

Are you familiar with the numbers and marks of the 2494 bales of cotton arrested at New Orleans after being loaded on the steamship "Texas"? Are you familiar with the marks and numbers of the various lots of said cotton claimed by said banks as well as the 1000 bales, less a shortage of six bales, claimed by Paul Chardin? Are you familiar with the dates and amounts of the drafts drawn against said cotton? Assuming such familiarity, in order to avoid the unnecesary work of repeating all said marks and numbers, we ask you the following questions:

To the sixteenth interrogatory he saith:

Yes, I am familiar with the numbers and marks of the 2494 bales of cotton arrested at New Orleans after having been loaded on the steamer "Texas." I am also familiar with the

marks and numbers of the various lots of said cotton claimed by the said banks as well as the 994 bales claimed by Paul Chardin. I am also familiar with the dates and amounts of the drafts drawn against said cotton.

Interrogatory No. 17:

Did you ever receive any bills of lading issued by the Compagnie Generale Transatlantique (hereafter called custody bills of lading) each covering 100 bales of cotton, corresponding with the marks and numbers of the four lots of 100
730 bales each, claimed by the Societe Generale? If yes, state when and from whom you received said custody bills of lading and what you did with them.

To the seventeenth interrogatory he saith:

Scheuch & Co. received on 26th of April, 1910, custody bills of lading issued by the Compagnie Generale Transatlantique, from Steele, Miller & Co., each covering 100 bales of cotton corresponding with marks and numbers of the four lots of 100 bales each, claimed by the Societe Generale, Havre. Scheuch & Co. handed these custody bills of lading on the same day over to the Societe Generale accompanied by a note.

Interrogatory No. 18:

Did you ever receive any bills of lading issued by the Compagnie Generale Transatlantique (hereafter called custody bills of lading) each covering 100 bales of cotton, corresponding with the marks and numbers of the nine lots of 100 bales each, claimed by the Bank of Mulhouse? If yes, state when and from whom you received said custody bills of lading and what you did with them.

To the eighteenth interrogatory he saith:

Scheuch & Co. received on the 3rd and 7th of May, 1910, custody bills of lading, issued by the Compagnie Generale Transatlantique, from Steele, Miller & Co., each covering 100 bales of cotton corresponding with the marks and numbers of the nine lots of 100 bales each, claimed by the Banque de Mulhouse, Havre. Scheuch & Co. handed these nine custody bills of lading over to the Banque de Mulhouse on the days of their reception, accompanied by notes.

Interrogatory No. 19:

Did you ever receive any bills of lading issued by the Compagnie Generale Transatlantique (hereafter called custody bills of lading) each covering 100 bales of cotton, corresponding with the marks and numbers of the one lot of 100 bales, claimed by the Comptoir d'Escompte de Mulhouse? If yes, state when and from whom you received said custody bills of lading and what you did with them.

To the nineteenth interrogatory he saith:

Scheuch & Co. received on the 7th day of May, 1910, custody bills of lading issued by the Compagnie Generale Transatlantique, from Steele, Miller & Co., covering hun-
731 dred bales of cotton, corresponding with the mark and numbers of one lot of cotton of 100 bales, claimed by the Comptoir d'Escompte de Mulhouse, Havre. Scheuch & Co. handed these custody bills of lading on the the same day over to the Comptoir d'Escompte de Mulhouse accompanied with a note.

Interrogatory No. 20:

Did you ever receive any bill of lading issued by the Compagnie Generale Transatlantique (hereafter called custody bills of lading) covering one hundred bales of cotton, corresponding with the marks and numbers of the one lot of 100 bales, claimed by the Credit Havrais? If yes, state when and from whom you received said custody bill of lading and what you did with it.

To the twentieth interrogatory he saith:

Scheuch & Co. received on the 7th day of May, 1910, custody bills of lading issued by the Compagnie Generale Transatlantique, from Steele, Miller & Co., covering one hundred bales of cotton; corresponding with the mark and numbers of one lot of 100 bales of cotton, claimed by the Credit Havrais, Havre. Scheuch & Co. headed these custody bills of lading over to the Credit Havrais on the day of their reception, accompanied by a note.

Interrogatory No. 21:

Did you ever receive any bills of lading issued by the Compagnie Generale Transatlantique (hereafter called custody

bills of lading) each covering one hundred bales of cotton (less a total shortage of six bales) corresponding with the marks and numbers on the ten lots of 100 bales (less a total shortage of six bales), claimed by Paul Chardin? If yes, state when and from whom you received said custody bills of lading and what you did with them.

To the twenty-first interrogatory he saith:

Scheuch & Co. received on the 3rd and 7th of May, 1910, custody bills of lading, issued by the Compagnie Generale Transatlantique, from Steele, Miller & Co., covering each 100 bales of cotton (with a total shortage of 6 bales) corresponding with the marks and numbers of the ten lots of cotton of 100 bales each (less a total shortage of 6 bales) claimed by Paul Chardin. Scheuch & Co. handed those custody
732 bills of lading over to Paul Chardin on the days of their reception, accompanied by notes.

Interrogatory No. 22:

Had you, on any previous occasion or occasions, received custody bills of lading covering the same cotton covered or apparently covered by through railroad bills of lading attached to drafts drawn on said banks? If yes, state how often. Did you ask for and receive from Steele, Miller and Company any explanation in respect to said duplicating bills of lading? If yes, state fully what explanation was so given. If the same is contained in any correspondence, annex the same or copies thereof to your answer to this question. If you received any subsequent oral explanation from any representative of Steele, Miller and Company, state fully what such explanation was. Did you give credit to and believe such explanation, and why did you believe them?

To the twenty-second interrogatory he saith:

Scheuch & Co. had received from Steele, Miller & Co. on many occasions such custody bills of lading covering the same cotton covered by through railroad bills of lading attached to drafts drawn on said banks. Scheuch & Co. received for about 30,000 bales such custody bills of lading.

Scheuch & Co. wrote a letter on 8th of December, 1909, to Steele, Miller & Co., of which we annex a true copy to this deposition as exhibit No. 1, asking an explanation about those

custody bills of lading, and we received as a reply to our letter a letter from Steele, Miller & Co., dated 23rd of December, 1909, of which we annex a true copy to this deposition as exhibit No. 2. Further, when Mr. Linde came to Havre in January, 1910, we asked him about this matter again and he confirmed fully, what Steele, Miller & Co. had written, adding that this was a great favor and facility given to his firm only on account of the enormous business, which they did with the railroad and steamship companies. He confirmed also that this was only possible in giving a full guarantee to obtain the custody bills of lading, and he said, that, although it gave much trouble to his firm, they were very satisfied
733 to have been able to make these arrangements, as they now were sure to get their cotton loaded much quicker and on the steamers named in those bills of lading. I found this explanation very plausible and believed it being true, without having had the slightest suspicion or doubt, as I understood that the transportation companies were giving all facilities to good clients as Steele, Miller & Co. were for them. Besides, there did not come in my mind the idea that there might have been something wrong, because I considered Steele, Miller & Co. and especially Mr. Linde as the most honest people on earth. The fact alone that we continued to do business with them, and that we even increased our engagements, is the best proof that we have not had the slightest doubt about the correctness in their dealings, otherwise we would have stopped business immediately and not have risked all our fortune. If we would have had any suspicion or doubt about the fair dealings of Steele, Miller & Co., it would have been really stupid and ridiculous to accept any further drafts.

Interrogatory No. 23:

Did you give any explanation concerning said depulicating bills of lading to said banks? If so, state fully what explanation you gave? State, if you know, whether such explanation was credited and believed by said banks.

To the twenty-third interrogatory he saith:

The above explanations, received from Steele, Miller & Co. or from Mr. Linde, were given by us verbally to the banks exactly as we had received same. The explanation was cred-

ited and believed by the said banks. If the said banks would have had any doubt or suspicion they would not have allowed to exchange those bills of lading, and besides they would not have given any new credit to us for shipments from Steele, Miller & Co. I think that this is very clear and the best evidence of the good faith of the banks.

Interrogatory No. 24:

State, if you know, the nature and extent of the information which the commercial world at Havre had in respect to the financial condition of Steele, Miller and Company, especially between the announcement of the failure
734 of Knight, Yancey and Company and the bankruptcy proceedings taken in this country during the first week in May against Steele, Miller and Company. Please answer fully and in detail.

To the twenty-fourth interrogatory he saith:

Up to the 23rd of April, 1910, there were no rumors amongst the commercial world at Havre in respect to the financial condition of Steele, Miller & Co., and only in the evening of that day we received a telegram from Bremen stating, that a bank there had refused acceptance to drafts drafts of Steele, Miller & Co. by way of precaution on account of the fraudulent practices of Knight, Yancey & Co. On the 26th of April a firm at Havre had received a cable from New Orleans, stating that Steele, Miller & Co. had failed; but the next day the same firm received another cable, asking not to spread out this rumor, because the information was not confirmed. Only when receiving on 29th of April a cable stating to take up drafts and to cover hedges, we understood that they were in difficulties. These were all informations known about the failure of Steele, Miller & Co. up to 7th of May, 1910.

Interrogatory No. 25:

Were any drafts ever drawn by Knight, Yancey and Company against any of the said four Havre banks against cotton under any engagement d'importation between you and said banks or any of them? If so, did any of the cotton so drawn against fail to arrive?

To the twenty-fifth interrogatory he saith:

Knight, Yancey & Co. have drawn at various occasions on the Credit Havrais, Societe Generale, Comptoir d'Escompte de Mulhouse and Barrie Chalot & Co. documentary drafts against cotton, which Schench & Co. had bought from Knight, Yancery & Co. for their own account. This cotton has never failed to arrive.

Interrogatory No. 26:

So far as you know, did the Societe Generale, or the Bank of Mulhouse, or the Comptoir d'Escompte de Mulhouse, or the Credit Havrais or any of them or any representative of them know or have any reason to know or believe at the time of the receipt of said custody bills of lading that
735 the through railroad bills of lading attached to the drafts drawn against cotton of the same marks and numbers were forged or bogus bills of lading?

To the twenty-sixth interrogatory he saith:

The banks in question or any representative of them did not know or did not have any reason to know or to believe at the time of the receipt of the said custody bills of lading that the railroad bills of lading attached to the drafts drawn against cotton of the same marks and numbers were forged or bogus.

Interrogatory No. 27:

Do you know, and, if so, state whether at the time of the receipt of said custody bills of lading the said banks, or any of them or any representative of any of them, had any reason for not believing that the said custody bills of lading represented the cotton covered by the drafts previously accepted by the banks and shipped at the dates of said drafts?

To the twenty-seventh interrogatory he saith:

The said banks or any of them or any representative of them did not have any reason, at the time of the receipt of said custody bills of lading for not believing, that the said custody bills of lading represented the cotton covered by the drafts previously accepted by the banks at the date of said drafts.

Interrogatory No. 28:

It has been testified by the said Linde that on April 28,

1910, his firm cabled you to take up drafts drawn against a total of 2150 bales of cotton, and that on April 29, 1910, or thereabouts, you took up drafts against the Bank of Mulhouse, covering 350 bales, drafts against the Comptoir d'Escompte de Mulhouse covering 1000 bales, and drafts against the Societe Generale covering 200 bales, but did not take up drafts against Paul Chardin covering six hundred bales. Please state whether this transaction or the cotton involved had anything to do with the 2494 bales of cotton arrested on board the steamship "Texas."

Please explain fully what you did in response to said cable, whether it is true or not that you paid the aforesaid
736 drafts against the said three banks, and if you paid said drafts, state out of what funds you paid them?

To the twenty-eighth interrogatory he saith:

It is true that Scheuch & Co. received in the morning of 29th of April, 1910, a cable from Steele, Miller & Co. stating to "take up drafts" against a total of 2150 bales. These 2150 bales are relating to drafts drawn on the following banks and Paul Chardin:

350 B drawn for on the Banque de Mulhouse
1000 B drawn for on the Comptoir d'Escompte de Mulhouse
200 B drawn for on the Societe Generale
600 B drawn for on the Paul Chardin for his own account

These 2150 bales have nothing at all to do with the 2494 bales of cotton arrested on board of the steamer "Texas." These 2150 bales are the amount of cotton which is entirely missing to the three said banks and to Paul Chardin. This cotton has existed but as we have heard later on, it was taken back by some New Orleans banks or firms just before the failure of Steele, Miller & Co., so that the said three banks and Paul Chardin have not received any of this cotton.

When we received on 29th of April, 1910, the said cable from Steele, Miller & Co. we did not quite understand the expression "take up the drafts," and therefore we did not do anything else as we bought back the future hedges of 1550 bales, which the said three banks held against those shipments and which had accepted the documentary drafts against such cotton. The 600 bales of Paul Chardin, which had been ac-

cepted by him for his own account against delivery contracts, which he had with Steele, Miller & Co., did not concern our account.

I further state that Scheuch & Co. have not payed or covered the aforesaid drafts to the said three banks, because we had no funds in hand with which to pay those drafts, as all our money was tied up by our business engagements in our banks, so it was impossible to pay anything or any amounts especially of such importance. I refer in this respect to the extracts of our accounts with the three banks, which these banks will give you, and from which it is easy to see that we have not paid such drafts or any of them to the said three banks. Besides the banks will confirm this in their
737 depositions. The three said banks are furthermore still to-day in possession of the documents of those 1550 bales, of which they are the owners by their acceptances, and they have filed a claim against such cotton in the Bankruptcy Court against the bankrupt's estate. It is true that Scheuch & Co. sent a statement to Steele, Miller & Co. with the intention to debit the account of Steele, Miller & Co. for the amounts of those drafts drawn against the 1550 bales of cotton on our banks. By some clerical error in our office this statement reads "paid," while it should have been "accepted." I repeat again, that Scheuch & Co. did not pay those drafts, because they had no funds in hand with which to pay them, and they were not indebted to Steele, Miller & Co., as Steele, Miller & Co. are owing them over frs. 1,000,000, which is shown by the final balance of our accounts with them, of which I annex a copy to this deposition as exhibit No. 3.

Interrogatory No. 29:

Do you know Paul Chardin, or the firm of Paul Chardin? If yes, please state in what business or different kinds of business he or said firm is engaged in and in what places.

To the twenty-ninth interrogatory he saith:

I know the firm of Paul Chardin, which is engaged in the cotton business at Havre, buying and selling cotton for their own account as merchants. I know Paul Chardin, Paris, which is the head office of the firm and which is doing general merchandise business for their own account. Besides I understand that they are doing banking business at Paris, but not

as so called bankers, but only for their own account, that is to say, Paul Chardin is his own banker, not opening any bank credit to other individuals or firms. I know that Paul Chardin, Paris, is accepting drafts with documents attached against cotton which has been bought by his branch office at Havre in the United States, but Paul Chardin, Paris, is not accepting those drafts for account of other firms or individuals. Besides Paul Chardin we have many other commercial firms at Havre which are accepting documentary drafts drawn on themselves for their own account against cotton bought in the United States,

738 and I want only to name the following firms: Westphalen & Co., Les Nevoux de J. Georges Schmidt & Co., Thieullent Freres, Societe d'Importation et de Commission, A. Quesnel & Co. and others. They all do the same as Paul Chardin, but they are no bankers but commercial firms, giving no credit to other commercial firms. All these firms exactly as Paul Chardin are charging to the American shipper a bank commission of 3/16 or 1/4% for their acceptances just like the Havre banks or bankers do.

Interrogatory No. 30:

Did your firm have any business dealings with Paul Chardin in 1909 or 1910? If yes, state the general nature of said business dealings. Did you have engagements d'Importation with Paul Chardin similar to those you had with the said Havre banks?

To the thirtieth interrogatory he saith:

Scheuch & Co. had business dealings with Paul Chardin in 1909 and 1910. The general nature of those dealings was such that we sold to him for account of American shippers as agents cotton either on cif & 6% terms or deliveries. In both cases it was generally understood that the American shippers had to draw on Paul Chardin, Paris, against the purchase price of the cotton at 60 days sight, with bills of lading, insurance certificates and invoices attached to those documentary drafts. Scheuch & Co. sold also spot cotton to Paul Chardin in many instances, this business was done by Scheuch & Co. as merchandise at the usual Havre spot terms.

Scheuch & Co. have never had any "engagements d'importation" with Paul Chardin, Havre or Paris, similar to those they

had with the Havre banks. Paul Chardin has never done this kind of business.

Interrogatory No. 31:

Your answers to these interrogatories are to be used as evidence in a controversy between the trustee in bankruptcy of Steele, Miller and Company and Paul Chardin concerning the right or title to 1000 bales of cotton, less a shortage of six bales, forming part of the cotton arrested on the steamship "Texas," against which ten drafts were drawn by Steele, Miller and Company on Paul Chardin, each dated January 27, 1910, at Corinth, Mississippi, to drawers' order and by them
739 indorsed in blank, payable sixty days after sight:

One numbered 2135 for 38,201.70 francs, and reciting that it was drawn against one hundred bales of cotton marked R M U I 1/100.

One numbered 2131 for 38,281.20 francs, and reciting that it was drawn against one hundred bales of cotton marked R T H F 1/100.

One numbered 2138 for 38,325.70 francs, and reciting that it was drawn against one hundred bales of cotton marked R B X K 1/100.

One numbered 2137 for 37,439.40 francs, and reciting that it was drawn against one hundred bales of cotton marked R D G B 1/100.

One numbered 2132 for 37,404.20 francs, and reciting that it was drawn against one hundred bales of cotton marked R N A M 1/100.

One numbered 2133 for 37,681.85 francs, and reciting that it was drawn against one hundred bales of cotton marked R M B E 1/100.

One numbered 2130 for 37,518.00 francs, and reciting that it was drawn against one hundred bales of cotton marked R I N O 1/100.

One numbered 2136 for 37,678.65 francs, and reciting that it was drawn against one hundred bales of cotton marked R S O U 1/100.

One numbered 2139 for 38,258.15 francs, and reciting that it was drawn against one hundred bales of cotton marked R T P N 1/100.

One numbered 2134 for 37,197.75 francs, and reciting that

it was drawn against one hundred bales of cotton marked R N O I 1/100.

Please state, if you know, how said drafts happened to be drawn against Paul Chardin. Please state any and all facts you may know respecting said drafts and the cotton against which drawn which will throw any light on the question whether or not Paul Chardin had only the rights or interest in said cotton which a banker accepting drafts with bills of lading attached would have or whether Paul Chardin had other interest in or relations to said cotton.

To the thirty-first interrogatory he saith:

Referring to the drafts of one thousand bales of cotton, according to details given in this thirty-first interrogatory, I give the following correct explanation how these drafts happened to be drawn on Paul Chardin. Paul Chardin, Havre, bought at different dates in 1909 cotton from Steele, Miller &
Co. according to the contracts, of which I annex
740 to this deposition true copies as exhibits No. 4 to
No. 13. All of these contracts have been made verbally by Mr. Linde, who was just at Havre at that time, and confirmed by writing always immediately through Scheuch & Co. as agents of Steele, Miller & Co., as well to Paul Chardin as to Steele, Miller & Co., as always done. The Havre buyer, when purchasing thro' an agent of an American shipper, does not correspond directly with the shipper. These contracts have been confirmed also by Steele, Miller & Co. according to the contracts, copies of which I annex to this deposition as exhibits No. 14 to No. 18. At the time these contracts were made it was understood, as this was always the case and custom, that Steele, Miller & Co. had to draw against the cotton shipped under those contracts at 60 days sight on Paul Chardin, Paris, for account of Paul Chardin, Havre, with bills of lading, insurance certificates and invoices attached. Naturally and without specifying, it was understood as a general custom that Steele, Miller & Co. had to ship against those contracts only cotton which had to be delivered against the said contracts, as Paul Chardin had not opened any credit to Steele, Miller & Co., nor had he made any special arrangement with them neither verbally nor by writing concerning those drafts, but he only had allowed drawing on his Paris firm with the purpose to pay the purchase price of his cotton this way, which is

an old custom at Havre. Paul Chardin had not made any arrangement with Scheuch & Co. similar to those with the Havre banks or others concerning the drawing of Steele, Miller & Co. on him against those contracts. Besides, I refer to similar sales by Steele, Miller & Co. to Westphalen & Co., where it was also understood that Steele, Miller & Co. had to draw on Westphalen & Co. against those delivery contracts and where Westphalen & Co. insisted very energetically to receive the cotton, for which they had drawn on him. I mention this only to show that the case of Paul Chardin was not an exceptional one.

It happened that the cotton which Steele, Miller & Co. had shipped and drawn on Paul Chardin did not arrive in time to make the delivery at the time Paul Chardin needed his cotton purchased, and in these instances Paul Chardin asked Scheuch & Co., either verbally or by phone, if they could
741 oblige him in delivering some of their spot cotton instead of waiting until the cotton, which was shipped to him by Steele, Miller & Co. would arrive. As Scheuch & Co. wanted to oblige Paul Chardin and as they also wanted to avoid any claim for penalty by Paul Chardin against Steele, Miller & Co. on account of the delay in delivery, they agreed to the demand of Paul Chardin and delivered to him cotton from their stock warehoused at Havre, in exchange of the cotton in course of shipment to Paul Chardin. Scheuch & Co. were not bound at all to do this and if they would not have had a stock of cotton at Havre, wherein to find suitable cotton for Paul Chardin according to the contract conditions with Steele, Miller & Co. and him, Scheuch & Co. would not have been able to advance any cotton to Paul Chardin. These transactions have been special transactions between Paul Chardin and Scheuch & Co. acting as merchants for their own account. The said purchases were not made at fixed prices, but on a certain basis, prices to be fixed later. This explains the differences between the drawing prices of Steele, Miller & Co. and the final settlement prices. These differences in prices have been always settled between Paul Chardin & Scheuch & Co. for account of Steele, Miller & Co.

In January, 1910, Paul Chardin received directly from the steamer 1200 bales, which Steele, Miller & Co. had shipped against the said delivery contracts in drawing for 500 B. on Paul Chardin and for 700 bales on Comptoir d'Escompte de

Mulhouse for account of Paul Chardin at 3 d/s. This fact proves also that the understanding of those contracts was this, that Paul Chardin had to receive the very cotton drawn for on him or on his bank, Comptoir d'Escompte de Mulhouse—as the buyer.

Interrogatory No. 32:

It had been stated in one part of the testimony of said Linde that the various custody bills of lading referred to in previous interrogatories and covering the so-called "Texas" cotton were forwarded to you merely as "agents" of Steele, Miller and Company with instructions to exchange the same for the through railroad bills of lading accompanying the various drafts drawn against said cotton. Please state whether this is true; and if not, state what is the truth in respect thereto.

742 To the thirty-second interrogatory he saith:

All the consignment business of Steele, Miller & Co. to Scheuch & Co. was done by the latter as merchants for their own account and not at all as agents of Steele, Miller & Co., because all the credits which the banks had opened where [were] given to Scheuch & Co. as merchants and not at all as agents of Steele, Miller & Co. Scheuch & Co. in their quality as merchants were fully responsible to the banks for those transactions, which would not have been the case if they had acted only as agents of Steele, Miller & Co. Scheuch & Co., however, were the agents of Steele, Miller & Co. for the business contracted between Paul Chardin and Steele, Miller & Co., in which Paul Chardin was the actual buyer of the cotton against which Steele, Miller & Co. had drawn for on Paul Chardin. The custody bills of lading have never been forwarded to us as "agents" of Steele, Miller & Co., but we received same as merchants and had of course to hand them over to our banks immediately, because they had accepted the drafts against such cotton of which they were the owner as long as they were in possession of the documents.

Interrogatory No. 33:

It was testified by the said Linde that in February or March, 1910, the said Havre banks were alarmed and held meetings about the Steele, Miller and Company cotton covered by the drafts drawn on said banks, and that he was informed of such meetings by your firm. State whether or not you gave Linde

any such information, and whether or not it is true, as far as you know, that in February or March, 1910, said banks became alarmed and held any meetings in respect to said cotton covered by said drafts.

To the thirty-third interrogatory he saith:

I herewith testify that the Havre banks have never been alarmed nor have they held meetings about Steele, Miller & Co. cotton and I did not give such an information to Mr. Linde. The banks have asked us occasionally on which steamer such and such cotton would arrive, as sometimes the drafts were falling due and the cotton had not yet arrived, but therefore they have never been alarmed, as the delay was nothing unusual to them. Scheuch & Co. when cabling or writing to Steele, Miller & Co. to hurry forward certain cottons
743 have several times mentioned the names of the banks, as if they had charged us to claim, but this had been merely done by Scheuch & Co. because they believed that then Steele, Miller & Co. would attach more importance to those letters or cables. In reality never any of those banks had charged us to do this.

Interrogatory No. 34:

Do you know, or can you set forth, any other matter or thing which may be a benefit or advantage to the parties at issue in this cause, or either of them, or that may be material to the subject of this your examination or [of] the matters in question in this cause? If yes, set forth the same fully and at large in your answer.

To the thirty-fourth interrogatory he saith:

I do not believe that I have overlooked to mention any matter or thing I know which might be a benefit or advantage to the parties at issue in this cause, or either of them, or that may be material to the subject of my examination or the matter in question in this cause. I affirm that I have given my depositions to the interrogatories and cross-interrogatories as conscientiously as possible according to my best knowledge and belief and I sincerely hope that these depositions will help to clear this cause according to the truth.

(Signed) ALBERT SCHILLING.
(Signed) J. P. BEECHER,
[Seal] Commissioner.

744 City of Havre,
Republic of France, ss.

I, J. P. Beecher, vice consul of the United States of America at Havre, France, do certify that Albert Schilling, the witness, personally appeared before me on the 18 day of September, 1911, at 2 o'clock in the afternoon, at the consulate of the United States at Havre, in the Republic of France, and, after being duly sworn to testify the truth, the whole truth, and nothing but the truth, did depose to the matter contained in the foregoing deposition, and did, in my presence, subscribe the same and certify to the authenticity of the exhibits. I certify that I have subscribed my name to each half sheet thereof, and further certify that according to cable instructions sent to Messrs. Scheuch & Co., of Havre, France, on September 4, 1911, by J. P. Blair, attorney, the attestations of each exhibit has (in view of their great number) been waived.

Witness my hand and official seal the day and year above written.

(Signed) JOHN PRESTON BEECHER,
Vice Consul of the United States of America at Havre, France.

Deposited in the post office at Havre, France, this 13 day of October, 1911.

(Signed) JOHN PRESTON BEECHER,
[Seal] Vice Consul of the United States of America, at Havre, France.

(Fourteen $2.50 American Consular Service Fee Stamps, each stamped across face with red ink, 18 SEP 1911.)

Consular fee $35
Service of clerk for copying, verifying accounts, etc.....$35

$70

745 EXHIBITS OFFERED WITH DEPOSITION OF FERDINAND SCHEUCH AND ALBERT SCHILLING.

Filed October 24th, 1911.

United States District Court, Eastern District of Louisiana.

J. A. E. Pyle, Trustee,
vs. No. 14242.
Texas Transport & Terminal Company, et als.

746 COPY OF LETTER DATED 8TH DECEMBER, 1909, ADDRESSED TO STEELE MILLER & CO. BY THE FIRM OF SCHEUCH & CO., HAVRE.

Scheuch & Co., Havre.
Ferd. Scheuch, Albert Schilling.

Havre, 8th December, 1909.

Messrs. Steele, Miller & Co.,
Corinth, Miss.

We beg to acknowledge receipt of your favor of the 23rd ult., and hand you inclosed in exchange original and duplicate through bill of lading covering the lot QHEC—100 b. c. Inv. 1348 for your port bill of lading.

The Societe Generale has asked us why you want this exchange of bladings [ladings] and requested us how it is possible that you are able to get port bill of ladings for the same cotton on which you have already got through bill of ladings. They throw up this question out of interest for their own and do not want in any way to hurt your feelings by this and proof mistrust, but for the principle sake and for their own guidance and information they would like if you explain to them how this can be manipulated, as it is most obvious that irresponsible people could make abuse of such a liberality on behalf of the American railroad or steamship agents by simply drawing a second time against the same lot of cotton on a different blading [lading].

We personally too do not understand this sort of affairs, as

we already wrote you in your previous letters, and we shall be glad if you will let us have a reply at an early date.

Yours very truly,

Signed: SCHEUCH & CO.

OvP
Recommandee 2 B/L.

Scheuch & Co. Exhibit 14242-No. 1.

747 COPY OF A LETTER DATED 23RD DECEMBER, 1909, ADDRESSED BY STEELE, MILLER & CO. TO SCHEUCH & CO., HAVRE.

Steele, Miller & Co.,
Cotton Merchants.
L. C. Steele, J. H. Miller, C. H. G. Linde.

Cable Address, "Stemil."

Corinth, Miss., U. S. A., 12/23-1909.

Messrs. Scheuch & Company,
Havre.

Dear Sirs:

Your favor inclosing bills of lading for cancellation has been duly received.

We readily understand the argument of the Societe Generale, and in reply beg to say the following: If a new set of documents is required same can only be obtained by giving full guarantee, and it is by no means easy. We thought our action would be appreciated, as we wanted all our cotton to get across without delay, and we were also under the impression that possibly before the Xmas holidays some good demand might spring up and enable you to sell the cotton at a full price. We know it costs money to carry cotton and we are trying to save as much expense as possible.

By securing port bills lading we had the guarantee that the cotton would sail, and that is why we went to all the trouble. The Hon. management of the Societe Generale knows how much quicker cotton shipped on a port lading gets across, and

if we could undertake to ship everything under such documents as would be glad to do it.

Our present business arrangement we regret to say makes such a thing an impossibility. However, we are figuring on changing our present system.

Kindly explain matters to the Societe Generale, and oblige,

Very truly yours,

Signed: STEELE, MILLER & CO

CHGL/nb.

Scheuch & Co. Exhibit No. 2.

748 United States District Court, Eastern District of Louisiana, New Orleans Division.

J. A. E. Pyle, Trustee,

vs. No. 14,240.

Texas Transport & Terminal Company, et als.

Sheets of accounts in French, marked Exhibit No. 3, "24 feuilles," "Scheuch & Co.," filed in case No. 14,242, offered in connection with depositions of Ferdinand Scheuch and Albert Schilling on behalf of the defendants, Havre banks, and filed November 20, 1911.

Note: Transmitted in the original to the Honorable United States Circuit Court of Appeals for the Fifth Circuit, in accordance with the stipulation of counsel, copied at page 1335 of this transcript.

749 Scheuch & Co., Agents.
Telephone 912.

Havre, May 29th, 1909.

Mr. Paul Chardin,

No. 360. E/V.

It is in thanking you, sir, that Messrs. Steele, Miller & Co., of Corinth, Miss., confirm you the sale made through us of 2400 bales Orl./Tex. or Gulf Middg. g. c. 28/29 m/m staple. Delivery to commence from November, 1909, 200 B. per month until October, 1910, at 3-3/4 fcrs. on month of delivery.

Final arbitration at Bremen.

Payment at 60 days sight ——% return on price fixed until 25th of month of delivery.

Accept our sincere salutations. SCHEUCH & CO.

Havre, May 29th, 1909.

No. 360.

Messrs. Scheuch & Co.,
Havre.

We are confirming the sale made to Messrs. Steele, Miller & Co. by our agency of 2400 bales good middg. gc. 28/29 Orl/Tex. or Gulf. Delivery 200 bales per month from November, 1909, until October, 1910.

Price to be fixed until the 25th of the month of delivery, at 3-3/4 frcs. per 50 kilos according to the conditions of your contract on month of delivery of the 29th of May, 1909.

14242. Exhibit No. 4.

750 Scheuch & Co., Agents, Havre.

Messrs. Steele, Miller & Co.,
Corinth, Miss.

Copie.

No. 360. Havre, May 29th, 1909.

Dear Sirs:

We herewith confirm sale for your account to MM. Paul Chardin, as per order sent to you dated to day by Mr. Linde. Number of bales, 2400 (two thousand four hundred B/); grade and description, good middg. g. c. 28/29 m/m; Frs. 3 3/4 on, price to be fixed not later than 25th of the delivery month by buyers. Delivery, November, 1909, to October, 1910; 200 B/ a month. Destination, Havre. Reimbursement, payable at delivery.

Remarks: ....

Very truly yours,
SCHEUCH & CO.

S 3 po 409.

Scheuch & Co. Exhibit No. 5.

751 Scheuch & Co., Agents.
Telephone 912.

Havre, August 12th, 1909.

No. 390.
Mr. Paul Chardin,
E/V.

It is in thanking you, sir, that Messrs. Steele, Miller and Co. confirm you the sale made through us of 200 bales good middg. gc. 28/29 m/m., delivery 400 B. per month November, 1909-March, 1910, at 3 1/2 frcs. per 50 kilos on the month of delivery. Payment at 60 days sight 3/16%, returnable from your Paris office.

Documents to be returned on acceptance of drafts.

Accept, sir, our sincere salutations.

SCHEUCH & CO.

1000 B. call buyers option.
1000 call sellers option.

Havre, August 12th, 1909.

No. 397.
Messrs. Scheuch & Co.,
Havre.

We are confirming the sale of Messrs. Steele, Miller & Co., Corinth, Miss., made through your agency of 2000 bales good middg. g. c. & 28/29 m/m at 3-1/2 on the month of delivery, November, 1909, to March, 1910, 400 B. per month according to the conditions of your contract of August 12th, 1909.

14242. Exhibit No. 12.

752 Scheuch & Co., Agents, Havre.

Messrs. Steele, Miller & Co.,
Corinth, Miss.

Copie.

No. 397. Havre, August 12th, 1909.

Dear Sirs:

We herewith confirm sale for your account to MM Monsieur Paul Chardin, as per offer received from your Mr. Linde.

Number of bales, two thousand. Grade and description, good middg. g. c. & 28/29 m/m. Price, Frs. 3 1/2 on the month of delivery. Price to be fixed not later than the 25th of the month preceding. Shipment, delivery at Havre. Destination, 400 B/. Monthly from Novbre. 09 until March, 1910. Reimbursement at 60 days sight on buyers Paris.

Remarks:

1000 bales call buyers option.
1000 bales call sellers option.

Very truly yours,

SCHEUCH & CO.

S4/1h.

Scheuch & Co. Exhibit No. 13.

753 Copie.

Steele, Miller & Co.
Cotton.
Corinth, Miss., U. S. A.

Cable Address, Stemil, Corinth.

Codes:
Shepperson's Standard 1881.
Shepperson's Telegraphic 1878.
Meyer's Atlantic, 38th Edition.

Delivery Contracts.

Corinth, Miss., May 29th, 1909.

Messrs. Scheuch & Co.,
Havre, France.

Dear Sirs:

We beg to confirm sale to you as follows:
Your sale No. 360.

Quantity—2,400 twenty-four hundred bales.
Quality—Good middg. g. c. 28/29 m/m.
Price—3 3/4 Frcs. on price to be fixed not later than 25th of the month preceding the month of delivery, buyers option.

Shipment—Delivery November, 1909, to October, 1910, 200 bales monthly.

Destination—Havre, France.

Reimbursement—60 D/S on buyers, Paul Chardin, Paris. 3/16% bank commission.

Remarks—Usual terms.

Please confirm in turn.

Yours very truly,

Contract No. E-6. STEELE, MILLER & CO.

Scheuch & Co. Exhibit No. 14.
Claneur C.

754 Copie.

Steele, Miller & Co.
Cotton.
Corinth, Miss., U. S. A.

Cable Address, Stemil-Corinth.

Codes:
Shepperson's Standard 1881.
Shepperson's Telegraphic 1878.
Meyer's Atlantic, 38th Edition.

Delivery Contracts.

Corinth, Miss., August 12th, 1909.

Messrs. Scheuch & Co.,
Havre, France.

Dear Sirs:

We beg to confirm sale to you as follows:
Your sale No. 397.

Quantity—2,000 two thousand bales.
Quality—Good middg. g. c. & 28/29 m/m.
Price—Frs. 3-1/2 on the month of delivery, price to be fixed not later than the 25th of the month preceding month of delivery. 1,000 bales buyers, 1,000 bales sellers call.

Shipment—Delivery 400 bales each from November, 1909, to March, 1910.
Destination—Havre, France.
Reimbursement—60 D/S. on Paul Chardin, Paris, France. 3/16% bank commission.
Remarks—Usual terms.

Please confirm in turn.

Yours very truly,
STEELE, MILLER & CO.

Contracts No. E-15.
P. T. O.
Claneur C.

Scheuch & Co. Exhibit No. 18.

(On reverse:)

Prices fixed up to now by us.
100 bales November Frs. 81-5/8.
100 bales December Frs. 81-3/8.
100 bales January Frs. 81-1/8.
100 bales February Frs. 81.
100 bales March Frs. 81.

755

Copy.

Ex 18 bis.

Business Rules With Messrs. Steele, Miller & Co.,
Corinth, Miss.

Scheuch & Co.,
Havre.

Unless otherwise stated in your or our cables, the following rules are binding for the contracts made between us:

Codes to be used only: Meyers Atlantic Cotton Code, 39th edition, and conditions as per copy inclosed.
Cable address: Messrs. Steele, Miller & Co.'s address is Stencil. Messers. Scheuch & Co.'s address is Scheuch.

1. Offers of bids: Shipments within a fortnight (prompt shipment) by steamer direct (that means B/L must be signed and dated within 14 days from date of sale).

Cif & 6% offers to be sold "Rendu" as per Schaddeggs table except Pferdmenges Cif & 6% (1% franchise & mutual weight); if Cif & 6% sold it must be mentioned in the cable.

Port bill of lading or through bill/ldg. via N. Orleans unless otherwise stated (our discretion).

Master receipts when issued by the s/s companies have always to follow as quick as possible.

Offers from America in force for reply leaving Havre on day of its reception, latest at I. P. N. O. Havre time, basis offers excepted.

Replies to bids from Havre must arrive in Havre within the time stipulated in the cable, or if nothing stated, the reply must be in Havre latest at 7 o'clock (Haver time) on the following morning cable was sent from Havre.

Please always reply to bids and if impracticable make best possible counter offer.

2. Prices and Limits: In pence, Cif & 6% gross weight guaranteed within 1% franchise, including 1/4% bank commission to be deducted in the invoice for 60 days only Frs. 300 dn 100 B/ (one) 1% return commission to Messrs. Schench & Co. (See #7.)

Exchange 1£ = frs. 25.20 or mk. 20.40.

3. Reimbursement: 60 days sight for Havre shipments (for consignments always 90 days); 90 days sights for other ports, but no bank commission.

Documents to be handed over to bank or firm against acceptance of the drafts.

4. Insurance: As per Havre exchange rules and must include country and sea damage. The damage must be paid by the insurance Co. to the extent of 2/3rd (two-third).

Besides the risk on the wharves of shipping ports until European warehouses or mills must be covered.

5. Classification: Even running Liverpool classes. Good color and 28/29 m/m staple, 28 m/m if Bremen arbitration.

6. Sales: Sales must always be confirmed by cable immediately and by letter with next mail.

7. Commission: Messrs. Scheuch & Co.'s commission. (See memorandum attached.) Invoices to be made up as per inclosed "pro forma" every 100 B/ a separate invoice, draft and certified public weighers note; 800 iron bands per 100 B. only allowed; if more, they will be counted back.

9. Samples: See memorandum attached.

10. Arbitration: For Havre shipments to be held in Liverpool. If other arbitration is wanted it must be specified in the cable. (See memo.)

11. Surveying: Messrs. Steele, Miller & Co. Arbitrators in Liverpool are Messrs. W. H. Horburg & Co., as per letter August 30th, 1907. Weights, (weighing of all arriving shipments in Havre is done by the "Receveurs de Cotton," sworn public weighers). Grades must be surveyed in Havre by Messrs. Haubert Burel & Co.; in other ports by a responsible firm, in case that shippers did not mention the name of their controllers in the invoice. Surveying fees are Fcs. for 100 bales in Havre.

12. Claims: All claims for weights, grade or other duly certified claims are to be paid immediately after reception of the vouchers by a check France. Weight settlement per contract.

For all conditions on shipments to Havre the Havre Exchange Rules are binding. (Copy of them herewith.) For other ports Liverpool or Bremen rules as per special agreement.

Messrs. Scheuch & Co. are authorized to sell in francs Cif & 6% or Havre delivered "Rendu" terms.

Remarks: Changes as per memorandum attached.

The undersigned firms, after having read the above conditions, declare to accept same in force until revocation.

Corinth, August 23rd, 1907.

STEELE, MILLER & CO.,

(Signed) Per pro C. H. G. LINDE.

Havre, August 5th, 1907.

(Signed) SCHEUCH & CO.

14242. Exhibit No. 18 bis.

756 COPY OF A LETTER DATED 20th OF SEPTEMBER, 1909, ADDRESSED BY STEELE, MILLER & CO. TO SCHEUCH & CO.

Steele, Miller & Co.
Cotton.
Corinth, Miss., U. S. A.

Cable Address, Stemil-Corinth.

Codes:
Shepperson Standard 1881.
Shepperson Telegraphic 1878.
Meyer's Atlantic, 39th Edition.

9/20/09.

Messrs. Scheuch & Co.,
Havre, France.
Gentlemen:

Referring to the hadnling [handling] of our this season's delivery business we beg to say the following:

We will not ship and invoice the cotton against the special contract, but invoice it exactly like the consignment shipments of last season, and shall make out every time when we ship some cotton special contract, so you may know at what price and against which bank or buyer we are going to draw.

Drawing price: We shall take as basis the futures sold against delivery business or the price which has been fixed by us or the buyers. It, therefore, is necessary that we get all account sales of futures without delay; but should we take as basis some future sales which have been closed out by you in the meantime, we presume that it will not make any difference, as you have plenty of margins there; beside, we think that our shipments to you this season will show gain in weight like last season, which will give you still more margin.

Reimbursements: We shall draw against Paul Chardin and Westphalen from time to time. For instance, now we will draw against October-November delivery, in October we will draw against December del., in November against January del., etc. Should we need more reimbursement we first will take the 1000 bales reimbursement which we have still open on the

Banque de Mulhouse, and then on Comptoir d'Escompte de Mulhouse, or whichever reimbursement you may give us.

We hope that all this will be satisfactory, as it is the main thing to keep things moving.

Very truly yours,

STEELE, MILLER & CO.,

Per K. SCHMEDES.

KS/P.

Scheuch & Co. Exhibit No. 19.

757 COPY OF A LETTER DATED SEPT. 30TH, 1909, ADDRESSED BY SCHEUCH & CO., HAVRE, TO STEELE, MILLER & CO., CORINTH.

Scheuch & Co., Havre.
Ferd Scheuch, Albert Schilling.

Havre, September 30th, 1909.

Messrs. Steele, Miller & Co.,
Corinth, (Miss.).

Dear Sirs:

Re to your delivery sales in Havre we beg to ask you if you can allow to our friends and especially to Mr. Paul Chardin to fix prices not later than 25th of the delivery month instead of month preceding delivery month. We think this will not make much difference to you, as we expect the current months this season always very stiff up to the end, so you would only have a profit of it in case buyers should fix so late. Please let us hear from you about this.

We have your favor dated 20th inst., and noted best what you say about shipping against deliveryes—sales. We wrote you in a special letter concerning Westphalen & Co.'s deliveries.

Try to arrange and draw on Westphalen & Co. and Paul Chardin only against cotton which may be applied for the delivery contracts to these peoples whenever you can.

We beg you further to push those cotton drawn on W. & C. or P. Ch. thro' so it arrives before the drafts fall due, as

otherwise you know we will have lots of difficulties with them and it will cost more interests as if you draw on banks.

We sold some spots today and hope it is satisfactory.

Yours very truly,

Signed SCHEUCH & CO.

Scheuch & Co. Exhibit No. 20.

758 COPY OF A LETTER OF STEELE, MILLER & CO. ADDRESSED TO SCEUCH & CO., DATED IST OF NOV., 1909.

Steele, Miller & Co.,
Cotton Merchants.

L. C. Steele, J. H. Miller, C. H. G. Linde.

Cable Address, Stemil.

Corinth, Miss., U. S. A. 11/1/09.

Messrs. Scheuch & Co.,
Havre, France.

Gentlemen:

Inclosed we beg to hand you invoices for Jan. delivery Messrs. Westphalen & Co. and Paul Chardin. You will notice that we insured the Westphalen cotton at the net invoice amount plus 10%, as this cotton has been sold rendu and not delivery terms. For Mr. Paul Chardin, of course, we insured the cotton at the market value. You further will see from inclosed contract that we invoiced the 1200 b. c. for Mr. Paul Chardin at the actual market value. Of course we cannot draw only for the prices fixed by Mr. Chardin, which are much lower than the cotton is worth now, and, therefore, please arrange acceptance of drafts in case Mr. Chardin should say that the drawing price is too high. We do not doubt you will have any trouble to do that, as the drafts will fall due only at about middle of January, at which time you will have delivered the cotton and all settlements will have been made.

Trusting that you will find this satisfactory, we beg to remain,

Yours very truly,

STEELE, MILLER & CO.,
Per K. SCHMEDES.

Scheuch & Co. Exhibit No. 21.

759 EXTRACT OF A LETTER OF SCHEUCH & CO. TO STEELE, MILLER & CO., DATED 10 NOV., 1909.

Scheuch & Co., Havre.
Ferd Scheuch, Albert Schilling.

Havre, 10th of November, 1909.

Messrs. Steele, Miller & Co.,
Corinth, Miss.

Dear Sirs:

Referring to your letter of 1st inst., inclosing invoices of Messrs. Westphalen & Co. and Paul Chardin, we noted what you say in regard to this matter. We hope that Mr. Paul Chardin will not make any difficulty because you have drawn at the day's value instead of drawing at the value of the fixed prices. In future if you can do so draw only the real value to avoid any trouble with our friends here. From the invoices for Mr. Paul Chardin we see that you mentioned the grade and staple and therefore we suppose this cotton may really be applied against the deliveries to Paul Chardin without being classed out by our man before delivery. If not so, please let it know.

Signed SCHEUCH & CO.

Scheuch & Co. Exhibit No. 22.

760 Copie.

Steele, Miller & Co.,
Cotton Merchants.
L. C. Steele, J. H. Miller, C. H. G. Linde.

Cable Address, "Stemil."

Corinth, Miss., U. S. A. 11/29/09.

Messrs. Scheuch & Co.,
Havre, France.

Gentlemen:

We are in receipt of your favor of the 10th inst., contents of which we carefully noted.

Regarding Chardin, we think you will be able to make your deliveries to these friends out of the cotton drawn on them. However, we think it advisable for your classer to go through that cotton before tendering. It is our intention to satisfy these friends in every respect; on the other hand, it is not necessary to give anything away.

Regarding Westphalen & Co., we note that everything has been arranged satisfactorily. If they should raise any kick on the cotton we shipped them they may go to arbitration in Bremen, but we ask you not to replace anything. The way we proposed to handle their business was absolutely fair, and we intended to treat them right in every respect. They showed, however, so little appreciation of this fact that we do not think it necessary to make any concessions whatever. In our opinion the only reason why they finally consented to let us refill their contracts was that they do not need the cotton right now and wanted to save carrying charges. Of course we leave you entirely free handed in this matter, but at the same time we want you to know how we feel about it.

Regarding Banque de Mulhouse, we very much regret that these friends were inconvenienced on account of our drawing at sight. Mr. F. Van Gerpen and ourselves tried our very best to sell 90 d s on them, and only after this friend found it impossible to do so he changed our drafts. We were under the impression that this met with the approval of the Banque de Mulhouse after having received your cable of 26th Oct. There is no use arguing about the foreign exchange proposition. We think that Mr. F. van Gerpen stands about as high as anybody else in New York and has as good chance as as anybody else to sell bills. While perhaps at 11:00 o'clock in the morning you still can find a buyer for a 60 d s or 90 d s draft, or both, maybe this very sale filled up the name, and if you go at 1:00 o'clock with the same draft you cannot find any more buyers for it. There also other cases, and some people do not hesitate to force sales; which means they sell the exchange at any price to some smaller bank, which, of course, does not amount to much.

Yours very truly,

CHGL/P. Signed STEELE, MILLER & CO.

Scheuch & Co. Exhibit No. 23.

761 Copie.

Steele, Miller & Co.
Cotton.
Corinth, Miss., U. S. A.

Cable Address, "Stemil," Corinth.

Codes:
Shepperson's Standard 1881.
Shepperson's Telegraphic 1878.
Meyer's Atlantic, 38th Edition.

Corinth, Miss., Sept. 21st, 1910.

Messrs. Scheuch & Co.,
Havre, France.

Dear Sirs:

We beg to confirm you as follows:
Cipher "TIME."

Quantity—1000 one thousand bales.
Quality—Good middling basis.
Price—6.70d drawing price.
Shipment—.....
Destination—Havre, France.
Reimbursement—60 d/s on Paul Chardin, Paris, France. 3/16% bank commission.
Remarks—Against sale of L'pool futures against deliver business:

8/3 300 Bales 6.62
8/4 500 Bales 6.50 1/2
8/13 200 Bales 6.43 1/2 avge. 6.52 1/2.

Please confirm in turn.

Yours very truly,
STEELE, MILLER & CO.
(Signed) K. SCHMEDES.

Contract No. E-22.

Scheuch & Co. Exhibit No. 24.

762 Copie.

Steele, Miller & Co.
Cotton.
Corinth, Miss., U. S. A.

Cable Address, "Stemil," Corinth.

Codes:
Shepperson's Standard 1881.
Shepperson's Telegraphic 1878.
Meyer's Atlantic, 38th Edition.

September 30th, 1909.

Messrs. Scheuch & Co.,
Havre, France.

Dear Sirs:

We beg to confirm to you as follows:
Cipher "BILLI."

Quantity—1000 bales.....not.....
Quality—Basis good middling.
Price—6.83 drawing price.
Shipment—.....
Destination—Havre, France.
Reimbursement—60 d/s Paul Chardin, Paris, 3/16th% bank commission.
Remarks—Against 1000 b/c fixed price by us contract E15/397 a'ge Frs. 82 3/4 = 6.83
Please confirm in turn.

Yours very truly,
STEELE. MILLER & CO.
(Signed) K. SCHMEDES.

Contract No. E-31.
Scheuch & Co. Exhibit No. 25.

763 Copie.

Steele, Miller & Co.
Cotton.
Corinth, Miss., U. S. A.

Cable Address, "Stemil," Corinth.

Codes:
Shepperson's Standard 1881.
Shepperson's Telegraphic 1878.
Meyer's Atlantic, 38th Edition.

Nov. 1st, 1909.

Messrs. Scheuch & Co.,
Havre, France.
Dear Sirs:
We beg to confirm to you as follows:
Cipher "Hyatt."

Quantity—1200 b/c.
Quality—CM g. c. 28/29 m/m.
Price—798d drawing price.
Shipment—.....
Destination—Havre, France.....not.....
Reimbursement—60 d/s Paul Chardin, Paris.
Remarks—Shipped against Jan. del. Paul Chardin. 200 b/c E-6, 200 b/c E-8, 200 b/c E-9, 200 b/c E-10, 400 b/c E-15; futures to be sold later, as we shipped already against the futures sold originally against these delivery contracts at the beginning of the season.

Please confirm in turn.

Yours very truly,
STEELE, MILLER & CO.
(Signed) K. SCHMEDES.

Contract No. E-66.

Scheuch & Co. Exhibit No. 26.

764 Copie.

Steele, Miller & Co.
Cotton.
Corinth, Miss., U. S. A.

Cable Address, "Stemil," Corinth.

Codes:
Shepperson's Standard 1881.
Shepperson's Telegraphic 1878.
Meyer's Atlantic, 38th Edition.

December 20th, 1909.

Messrs. Scheuch & Co.,
Havre, France.
Dear Sirs:
We beg to confirm to you as follows:
Cipher RITA.

Quantity—1200 b/c twelve hundred.
Quality—Good middling.
Price—8.15 drawing price.
Shipment —.....
Destination—Havre, France.....not.....
Reimbursement—60 d/s Paul Chardin, Paris; bank comm. 3/16th%.
Remarks—Against February delivery contract P. Chardin futures to be sold later.

Please confirm in turn.
Yours very truly,
STEELE, MILLER & CO.
(Signed) K. SCHMEDES.
Contract No. E-88.

Scheuch & Co. Exhibit No. 27.

765 Copie.

Steele, Miller & Co.
Cotton.
Corinth, Miss., U. S. A.

Cable Address, "Stemil," Corinth.

Codes:
Shepperson's Standard 1881.
Shepperson's Telegraphic 1878.
Meyer's Atlantic, 38th Edition.

1/27/10.

Messrs. Scheuch & Co.,
Havre, France.

Dear Sirs:

We beg to confirm sale to you as follows:
Cipher "GEOF."

Quantity—1000 b/c.
Quality—Basis GM.
Price 7.81d drawing price.
Shipment—Not.
Destination—Havre, France.
Reimbursement—60 d/s Paul Chardin. 3/16% bank commission.
Remarks—Futures sold 12/24th 500 and 12/27th 500.

Please confirm in turn.

Yours very truly,
STEELE, MILLER & CO.
(Signed) K. SCHMEDES.

Contract No. E-129.

Scheuch & Co. Exhibit No. 28.

766 Copie.

Steele, Miller & Co.
Cotton.
Corinth, Miss., U. S. A.

Cable Address, "Stemil," Corinth.

Codes:
Shepperson's Standard 1881.
Shepperson's Telegraphic 1878.
Meyer's Atlantic, 38th Edition.

March 24, 1910.

Messrs. Scheuch & Co.,
Havre, France.

Dear Sirs:

We beg to confirm sale to you as follows:
Cipher Kaibe.

Quantity—Six hundred (600).
Quality—Good middling, g. c. 28/29 m/m.
Price—Fcs. 4 on May 8-16 98 1/2, July 93 500
July 92 3/8 100
Shipment—.....
Destination—Havre.
Reimbursement—60 d/s Paul Chardin, Paris, 3/16%.
Remarks—Against April delivery.....not.....

Please confirm in turn.

Yours very truly,
STEELE, MILLER & CO.
(Signed) K. SCHMEDES.

Contract No. E-193.

Scheuch & Co. Exhibit No. 29.

767 COPY.

Delivery Oct. /09.

Ex. Sunday S/s.

Havre, Oct. 25/09.

Mr. Paul Chardin, E/V., Dr., To Scheuch & Co.

Payable at 4 months 15 days from Oct. 14th. Contract 360 of the 24th July /09.

R O A C	71B/	Cotton	Miss.
R H U G	10 "	"	"
R A T O	10 "	"	"
R K O Z	9 "	"	"
R H O Z	2 "	"	"
R I T N	98 "	"	"
	200B	Kos. 47,842.	
987 Ties @ 5.12		505.05	
	10		
Repairs and Extra Bagging 159.00		664.5	
		Kos. 47,177.5	
Tare 5%		23,59.	
		Net Kos. 44,818.5—lbs. 98,828.	

50 B/ at fcs. 87¾
50 " " 89⅞
100 " " 89¼
average 89.03 fcs. for 50 Kos. $15,346.88 $15,346.89
Less 2% Disct. 306.94

Amt Oct. 29th, 1909 $15,039.95

E. & O. E.

Settlement.

Oct.	14th.....	$9,615.39	Cash 15 days' advances		$24.04
"	15th.....	3,846.15	" 14 " "		8.97
"	16th.....	961.54	" 13 " "		2.10
"	29th.....	553.58	" Balce.		35.13
		35.10 advances.			
		$14,991.76			

F 11—fs. 198.

14242—Exhibit No. 30.

768 COPY.

Delivery Apl.

Ex. S/s Kingstonian & Honduras.

Havre, Apl. 14th, 1910.

Mr. Paul Chardin E/V., Dr., To Scheuch & Co.

Payable at 4 months 15 days from Apl. 5th. Contract of the 30th July.

R.N.O.R.	90B/			
R.J.A.C.	11 "			
R.S.T.H.	94 "			
R.A.C.C.	5 "			
	200B/		Kos. 47.702	
491 Ties at	5.00	Kos. 245.5		
	100			
468 "	5.20	243.5		
Extra Baggings		150	639	
			44,063 Kos.	
Less Tare 5%			2,203	
			Kos. 41,860	
100 B/ at fcs. 95½	average fcs. 94.93¾		fcs. 79,481.65 @ 5.20	$15,284.93
100 " " 94½	Disct. 2%		1,589.63	305.69
			Due Apl. 20th.....	$14,979.24

Settlement—On Invoice a 100 B/ delivery April. Contract of the 29th May. Fact 12—fs. 469.

14242—Exhibit No. 46.

769 COPY.

Scheuch & Co.

Havre, Sept. 18th, 1909.

Establishment of Price.

Mr. Paul Chardin E/V.

Sir:

We beg to confirm the establishment of prices of 500 Bales of your contract No. 397 with Mess. Steele, Miller & Co., Corinth, as follows:

					Invoice Prices	
100B/	Nov.	base of futures	80½	at 3½ plus 84	Fes=13.24 cts.	Delivered.
100 "	Dec.	"	80¼	"	83¾ " =13.19	"
100 "	Jany.	"	80⅛	"	83⅝ " =13.18	"
100 "	Feby.	"	80⅛	"	83⅝ " =13.18	"
100 "	Mch.	"	80	"	83½ " =13.16	"

Please acknowledge receipt and advising us if it is O. K.

Yours truly,

(Signed) SCHEUCH & Co.

14242—Exhibit No. 47.

770 COPY.

Mr. Paul Chardin E/V.

April 20/1910.

Establishment of Price.

We beg to confirm the Establishment of Price as follows:

Sellers: Steele, Miller & Co., Corinth, Miss.

Date of Contract	No.	Bales	Date Shipment	Base of Futures	Premium on	Invoice Price
				$4		
May 29th, 1909	360 E 8	50	May	fut. 90¼ 109.25	3¾	14.87 cents.
June 4th, "	363 E 8	150	"	90¼ 14.25 cents.	3½	14.83 "

Yours truly,

(Signed) SCHEUCH & Co.

Scheuch & Co., Havre.

14242—Exhibit No. 90.

771 October 1st, 1909.

=Q A N Q=50B/ Liquidation Office—No. Oposit.
=Q N N O=50 " Cotton ex. S/s Oscorican.
Purchase Certificate No. 0 Oct. 1st/09 100B/ at fcs. 83¾ per 50 Kos.
Sales do " May 11th/09 100 " " 66¼ " 50 Kos.
(50 Bales Cotton, Net Weight Kos. 11,000) or 242,56½ lbs.

Debit.		Credit.
1	100 B Cotton on Nov., 1909.	
		cts.
Purchase price fcs. 83¾ = $0.13.20	Sale price fcs. 66¼ = $0.10.36	.10.36
Disct 2%	Disct. 2%	....
$6,927.44 = fcs. 36.022.70 @ 5.20 Net	fe 28,495.60 @ 5.20 Net	$5,479.92
$1,447.52	Diffce. between the 2 Invoices. Futures in Bank 6 Months.	
5.77	Commission (as per Rule 4.)	
1.93	" 0.10.ct. per B 1ct. 9	
.29	Telegrams.	
	Disct. from Oct 1st to Nov. 30th, 60 days at 3%	$ 7.24
	2.65 Purchase Brokge. 1%	
	.12 Stamps	
	6.85 Sale Brokge. ⅛%	
15.74	.12 Stamps	
	Debit Balance	1,464.01
$1,471.25		$1,471.25

S. E. & O.
E. & O. E.

Havre, Oct. 18th, 1909.

14242—Exhibit No. 91.

772 Oct. 4th, 1909.

Liquidation Office No.

SMXB 65B ex. S/s Honduras.

Cotton

Purchase Certificate No. Oct. 4th. 50B/ at fcs. 85¾ per 50 Kos. 13c-52
Sales " " Mch. 23rd. 50 " " 59⅛ " 9-20

50B Cotton, Net Weight 11,000 Kos. = 24,286½ lbs.

Debit.		Credit.
	50 B/ Cotton on November, 1909.	
Purchase price fcs. 85¾ = $13c 52 lb.	Sale price fcs. 59⅛ = per lb.	9c 20
Disct. 2%	Discount 2%	
$3,546.44	Net = fcs. 18,441.50 @ 5.20	fcs. 12,715.50 = $2,445.29
$1,101.15	Diffce. between the 2 invoices.	

Futures in Bank.

3.85	Commis. (Article 4 of Rules)		
.96	" 10 cents per B/		
.15	Telegrams .00½ "		
	Disct. from Oct. 4th to Nov. 30th, 57 Days @ 3% on $101.15		$ 5.23
	$4.43 Purchase Brokge. ⅛		
	.12 Stamps.		
	3.06 Sale Brokge. ⅛		
7.73	.12 Stamps.	Balance to Debit	$1,108.61
$1,113.84			$1,113.84

S. E. & O.
E. & O. E.

Havre, Oct. 4, 1909.

14242—Exhibit No. 92.

773 August 26, 1910.

Liquidation Office No.

Lemiere & Co's., September Fixation.

Cotton.

	c
Purchase Certificate No. Augt. 26th 100B/ at fcs. 98½ per 50 Kos = per lb.	15.60
Sales Certificate No. Sept. 16th. 100 B/ at fcs. 78⅞ per 50 Kos = per lb.	12.40

(50 B/ Cotton. Net Weight Kos. 11,000.)

Debit.			Credit.	
100 B/ Cotton on August, 1910, at				
	c			c
Purchase price, fcs. 98½ per 50 Kos. = lb.	15.60	Sale price, fcs. 78⅞ per 50 Kos. = per lb.		12.40
Disct. 2%		Disct. 2%		
$8,147.50 = (fcs. 42.367) Net		Net (fcs. 33,925.90)		$6,524.21
$1,623.29 Difference between the 2 Invoices.				

Futures in Bank 12 Months.

11.54	Commission (Art. 4 of Rules).		
1.93	" per B/ .10 centimes 1c 9		
.29	Telegrams.		
	Discount from Augt. 26th to Augt. 31st, = 5 days @ 3% on $1,623.29 =		$ 3.67
	$10.19 Purchase Brokerage 1%.		
	.12 Stamps.		
	8.15 Sales " "		
18.58	.12 Stamps.		
		Balance to our Debit	$1,654.96
$1,655.63			$1,655.63

S. E. & O.
E. & O. Ex.

Havre, August 26th, 1910.

14242—Exhibit No. 659.

Abstract of Drafts of Mess. Steele, Miller & Co. on Mr. Paul Chardin, Paris, and on the "Comptoir d'Escompte" of Mulhouse at Havre on his Order and for his Acct.

Cipher	Marks	No. of B/	Amts. of Drafts	Date of Acceptance	Date of Payment	Commis. of 3¼% Due by Steele, Miller & Co., to Paul Chardin
Time	QSET	100	$6,450.81	Oct. 5/09	Dec. 4/09	
	QBIM	100	6,522.04	"	"	
	QDWC	100	6,495.06	"	"	
	QEAN	100	6,449.50	"	"	
	QINO	100	6,430.13	"	"	
	RWOU	100	6,436.30	"	"	
	RACB	100	6,375.09	"	"	
	ROSX	100	6,463.67	"	"	
	SVTO	100	6,430.55	"	"	
	RTVW	100	6,374.96	"	"	
		1000	$64,428.13			$120.79
Billy	RYIT	100 B	$6,488.27	Oct. 18/09	Dec. 17/09	
	REFL	100	6,455.86	"	"	
	QMOI	100	6,554.18	"	"	
	ROTU	100	6,479.80	"	"	

EXHIBIT No. 660.

Abstract of Drafts of Mess. Steele, Miller & Co. on Mr. Paul Chardin, Paris, and on the "Comptoir d'Escompte" of Mulhouse at Havre on his Order and for his Acct.

Cipher	Marks	No. of B/	Amts. of Drafts	Date of Acceptance	Date of Payment	Commis. of 3¼% Due by Steele, Miller & Co., to Paul Chardin
	QESM	100	6,518.20	Oct. 18/09	Dec. 17/09	
	RUIA	100	6,509.20	"	"	
	RXZA	100	6,538.01	19	18	
	RPSV	100	6,533.88	"	"	
	QBIZ	100	6,553.63	"	"	
	QROI	100	6,532.90			
		1000B	$65,163.93			$122.18
Hyatt	RSTX	100B	$7,884.88	Nov. 13/09	Jany. 12/10	
	RVEC	100	7,883.17	"	"	
	RINA	100	7,620.62	" 15	" 14	
	ROUB	100	7,675.93	" 16	" 15	
	RJLK	100	7,778.62	Dec. 1	" 30	
	RSKN	100	7,884.42	Nov. 16	Nov. 19/09	
	RGIB	100	7,699.15	"	"	3 dys. sight on Comptoir d'Escpt. de Mulhouse for acct. Paul Chardin.
	RAGS	100	7,853.72	"	"	
	ROUT	100	7,627.78			

	RBLX	100	7,868.85	"	"	"
	RFLE	100	7,902.18	"	"	"
	RWMU	100	7,769.23	"	"	"
		1200	$93,448.55			$163.19
14242.						Scheuch & Co.

775 Continuation of Drafts of Steele, Miller & Co. on Paul Chardin.

RITA	RTOD	100B	$7,705.98	Dec. 31/09	Mch. 1/10	
	RSPW	100	7,606.38	Jany. 3/10	"	
	RSAC	100	7,455.83	"	"	
	REAA	100	7,553.64	"	"	
	RTNG	100	7,505.54	"	"	
	RDVP	100	7,649.09	"	"	
	RAHC	100	7,512.00	"	"	
	RSIH	100	7,549.02	"	"	
	RARU	100	7,537.07	"	"	
	RBAW	100	7,507.28	"	"	
	RGAF	100	7,534.06	"	"	
	RERC	100	7,594.27	5th	6th	
		1200	$90,780.16			$170.21
Geof.	RINO	100B/	$7,215.00	Feby. 11/10	April 12/10	
	RBXK	100	7,370.33	"	"	
	RTPN	100	7,357.34	"	"	

EXHIBIT No. 660.

Abstract of Drafts of Mess. Steele, Miller & Co. on Mr. Paul Chardin, Paris, and on the "Comptoir d'Escompte" of Mulhouse at Havre on his Order and for his Acct.

Cipher	Marks	No. of B/	Amts. of Drafts	Date of Acceptance	Date of Payment	Commis. of 3¼% Due by Steele, Miller & Co., to Paul Chardin
	R S O U	100	7,245.93	Feby. 11/10	April 12/10	
	R D G B	100	7,199.89	"	"	
	R N A M	100	7,361.77	12th	13th	
	R T H F	100	7,200.04	"	"	
	R M B E	100	7,246.51	"	"	
	R N O I	100	7,153.41	"	"	
	R M U I	100	7,346.48	"	"	
		1000B/	72,696.70			$136.31
Raibe	R Z Y A	100B/	$ 7,655.48	April 8/10	June 7/10	
	R W T A	100	7,679.82	"	"	
	R K N G	100	7,604.27	"	"	
	R L T O	100	7,674.39	"	"	
	R G C A	100	7,586.67	"	"	
	R M E N	100	7,569.70	"	"	
		600B/	$45,770.33			$85.82

Abstract of Drafts of Steele, Miller & Co., Corinth, Miss., on the "Credit Havrais" at Havre, from September 1st 1909.

Dates 1909	Cipher	Marks	No. of B.	Amt. Drafts	Date of Acceptance	Date of payment
June 18th	Jaxon	Q D O X	100B			
		Q A K O	100	$11,248.95	Sept. 18/09	Dec. 15/09
		Q A X Z	100			
		Q K O Z	100	11,259.00	"	"
		R C Z Z	100	5,517.61	"	"
June 29th	Jabul	R K P Q	100	5,869.97	"	"
		R K O M	100	5,836.39	"	"
Oct. 22nd	Dodo	Q S G E	100	6,875.87	Nov. 2nd	Feby. 1/10
		R G H H	100	6,816.88	" 7th	" 6th
		R W E J	100	6,863.18	"	"
		V B V B	100	6,897.16	"	"
		R V A L	100	7,034.07	" 2nd	" 1st
		T E B T	100	6,606.05	"	"
Oct. 22nd	Margo	P T L L	100	7,028.09	Nov. 3rd	Feby. 2/10
		R R W S	100	7,061.67	"	"

EXHIBIT No. 661.

Abstract of Drafts of Steele, Miller & Co., Corinth, Miss., on the "Credit Harvais" at Havre, from September 1st, 1909.

Dates 1909	Cipher	Marks	No. of B.	Amt. Drafts	Date of Acceptance	Date of payment
		RIMA	100	7,159.82	Nov. 3/09	Feby. 2/10
		RVAR	100	7,174.68	"	"
Oct. 22nd	Joujou	RAWO	100	6,629.01	Nov. 2nd	Feby. 1st
		ROAC	100	6,790.47	"	"
		ROHI	100	6,919.14	"	"
		RPYN	100	6,942.62	"	"
		SILR	100	6,709.30	"	"
		RLOY	100	6,940.51	Nov. 3rd	" 2nd
		RWAO	100	6,953.50	"	"
		RKSO	100	7,042.30	"	"
		SRGA	100	6,890.82	"	"
777		RASL	100	6,997.94		
Oct. 25/09	Cloclo	RDIG	100	7,136.20	Nov. 4/09	Feby. 3/10
		RLOT	100	7,222.75	3	2nd
		RTVR	100	6,975.63	"	"
		RBIP	100	7,115.28	"	"

		RHLV	100	7,112.64	"	"	
		RIVE	100	7,159.34	"	"	
		SCEN	100	7,121.24	"	"	
		SKVS	100	7,146.24	"	"	
		QWER	100	7,166.98	"	"	
		QCEH	100	7,191.05	"	"	
Oct. 31/09	Cecil	RAWB	100	7,529.71	Nov. 9th	Feby. 8th	
		SEXO	100	7,426.44	"	"	
		SDZR	100	7,224.45	"	"	
		QWIK	100	7,453.25	"	"	
		SEAC	100	7,322.41	"	"	
		SDOV	100	7,358.29	"	"	
		RVWN	100	7,439.04	"	"	
		SRSE	100	7,462.37	"	"	
		QERE	100	7,480.38	"	"	
		REOH	100	7,445.69	" 14th	13th	
		ROCW	100	7,410.00	"	"	
Dec. 13/09	Cora	SDIG	100	7,533.17	Dec. 27/09	March 25/10	
		RCAA	100	7,496.63	"	"	
		QFAT	100	7,465.25	"	"	
		REMA	100	7,580.74	"	"	
		REIC	100	7,678.43	"	"	

EXHIBIT No. 661.

Abstract of Drafts of Steele, Miller & Co., Corinth, Miss., on the "Credit Harvais" at Havre, from September 1st, 1909.

Dates 1909	Cipher	Marks	No. of B.	Amt. Drafts	Date of Acceptance	Date of payment
Dec. 18/09	Bell	REAM	100	7,455.59	Dec. 30/09	March 29/10
		QARE	100	7,543.71	"	"
		QAHO	100	7,546.75	"	"
		QRIA	100	7,691.69	31	"
		Q.VIS	100	7,532.71	"	"
		QTVA	100	7,621.78	Jan. 5/10	April 3/10
		QINO	100	7,581.94	"	"
		RNOS	100	7,666.91	"	"
		RARK	100	7,664.44	8th	6th
		QKIG	100	7,787.92	"	"
			100B	7,601.80	Jany. 8/10	April 6/10
Dec. 22/09	Cyrus	RDOM	100	7,582.56	"	"
		RREN	100	7,639.27	"	"
778		RCAT	100	7,752.54	"	"
		RAAR	100	7,640.09	"	"
		RYAT	100	7,654.38	"	"
		RAFK	100	7,761.46	"	"
		RSPI				

		QZTA	100	7,652.98	"	"	
		QSNO	100	7,789.88	"		
		RADZ	100	7,824.63	"	"	
Dec. 23rd	Bares	QWER	100	7,782.22	"	"	
		ROBV	100	7,609.35	"	"	
		RLOR	100	7,776.39	"	"	
		RMES	100	7,667.28	"	"	
		RFGV	100	7,670.70	Jany. 12th	April 10th	
Feby. 14/10	Mier	RDIX	100	7,514.38	Feby. 26th	May 25th	
		QZER	100	7,498.78	"	"	
		RKVS	100	7,523.37	March 1st	29th	
		SRVI	100	7,466.96	"	"	
		QFLG	100	7,499.10	"	"	
		RNTN	100	7,423.52	"	"	
		QPOO	100	7,543.18	"	"	
		RDER	100	7,542.44	"	"	
		RBHK	100	7,298.98	March 8th	June 5th	
		QSRY	100	7,421.10	"	"	
Feby. 17/10	Orlex	RTGN	100	7,376.01	March 2/10	May 30th	
		RMAS	100	7,520.20	"	"	
		RLIA	100	7,432.21	" 3rd	" 31st	
		QRAS	100	7,365.25	"	"	
		RCOL	100	7,149.75	6th	June 3rd	

EXHIBIT No. 661.

Abstract of Drafts of Steele, Miller & Co., Corinth, Miss., on the "Credit Harvais" at Havre, from September 1st, 1909.

Dates 1909	Cipher	Marks	No. of B.	Amt. Drafts	Date of Acceptance	Date of payment
		RHEL	100	7,184.19	March 6th	June 3rd
		QATV	100	7,367.49	"	"
		SGKR	100	7,144.46	"	"
		RKAS	100	7,396.93	8th	5th
		RTOV	100	7,287.01	"	"

779 EXHIBIT No. 662.

Abstract of Drafts of Steele, Miller & Co. on Bank of Mulhouse at Havre, from September 1st, 1909.

Dates	Cipher	Marks	No. of B/	Amt. Drafts	Date of Accp.	Date Due
Sept. 3/09	Team	RIUX	100			
		REOP	100			
		RSIP	100			
		RQUC	100	$24,950.62	Sept. 14th	Dec. 11th.
		RYEL	100	6,262.72	"	"

		RUEZ	100					
		RWUV	100	12,514.13		"		"
		QOAN	100					
		ROAT	100					
		RROA	100	18,628.24				
Sept. 3	Howze	QROK	100					
		RCAA	100	12,424.64	Sept.	16th	Dec.	15th
		RMVW	100					
		QMIN	100					
		RLIW	100	18,660.06		"		"
		RHHH	100					
		REAE	100					
		QHIC	100	18,567.07		"		"
		RQVX	100					
		QRAU	100	12,563.42	"	18	"	17
Sept. 4	Pope	QQAA	100					
		RAAC	100					
		QEQQ	100					
		RFEC	100	24,837.88	Sept.	16th	Dec.	15th
		SKNC	100					
		SBOO	100					
		RCHI	100	18,460.49		"		"
		RBRR	100					
		QARR	100	12,410.00		"		"
		RCGF	100	6,308.26		"		"

EXHIBIT No. 662.

Abstract of Drafts of Steele, Miller & Co. on Bank of Mulhouse at Havre, from September 1st, 1909.

Dates	Cipher	Marks	No. of B/	Amt. Drafts	Date of Accp.	Date Due
Sept. 6	Dudle	R U L X	100			
		Q I S B	100			
		R E P C	100			
		R T U F	100	24,837.66	Sept. 18th	Dec. 17th
		Q N O W	100	6,298.49	" 16th	" 15th
		Q E Z I	100			"
		Q U C E	100			
		R W I V	100			
		R X U C	100			
		Q A D I	100	12,209.32	" 16th	" 15th
14242.						Scheuch & Co.
780	June	R A K O	100B	5,547.70	Sept. 14th	Dec. 15th
		Q P P X	100	5,571.19	15th	16th
		R O C O	100		"	"
		R O C C	100		"	"
		R F G O	100		"	"
		R X Z K	100	22,232.53	18th	" 19th
Sept. 7 09	David	R P Q R	100B			
		R F O L	100			

			QABE	100	18,520.30	Sept. 16th	Dec. 15th	
			RJHO	100				
			QSAX	100				
			RTOD	100				
			QHCH	100	24,951.54	"	"	
			ROAA	100				
			RFKC	100	12,320.96	"	"	
			RHOU	100	6,193.58	"	"	
Oct.	4th	Some	RABU	100	6,297.06	Oct. 5th.	Jany. 3/10	
			RUKT	100	6,281.92	"	"	
			QMEN	100	6,297.22	4th	2nd	
Oct.	4th	Phone	RXAM	100	6,365.30	Oct. 5th	Jany. 3/10	
			RFUI	100	6,399.53	7th	5th	
			RGKS	100	6,502.68	"	"	
			RWEI	100	6,410.00	5th	3rd	
			QSOX	50	3,233.93	"	"	
			QXAF	100	6,538.22	"	"	
			QRID	100	6,550.52	"	"	
			ODOM	50	3,170.12	"	"	
Oct.	9th	Louis	QXOR	100	6,818.01	Oct. 19th	Jany. 17/10	
			QKJI	100	6,833.75	"	"	
			QANJ	100	6,884.33	"	"	
			QJER	100	6,856.24	"	"	

EXHIBIT No. 662.

Abstract of Drafts of Steele, Miller & Co. on Bank of Mulhouse at Havre, from September 1st, 1909.

Dates	Cipher	Marks	No. of B/	Amt. Drafts	Date of Accp.	Date Due
		Q Z O D	100	6,910.11	Oct. 21st	Jany. 19th
		R D X F	100	6,783.47	19th	17th
		R G W Q	100	6,829.03	"	"
		R U K T	100	6,812.84	"	"
		R P I D	100	6,779.66	"	"
		S C A T	100	6,637.49	21st	19th
Oct. 12/09	Inman	Q O Z T	100	6,667.17	Oct. 21st	Jany. 19/10
		Q E X S	100	6,754.95	"	"
		R A X T	100	6,610.15	"	"
		R X B Z	100	6,686.32	"	"
		R I X R	100	6,675.80	"	"
		R U W Q	100	6,607.06	"	"
		S N C U G	100	6,651.83	25th	23rd
		S K I A	100	6,658.72	"	"
		S B E T	100	6,676.92	"	"
		S L U G	100	6,661.63	"	"
Oct. 12/09	Harfe	S R T H	100B	6,658.66	Oct. 25th	Jany. 23/10
		S E G K	100	6,664.92	"	"

		SMBS	100	6,647.02	"	"
		SRIC	100	6,556.23	"	"
		SRMR	100	6,572.56	"	"
		RCIS	100	6,671.99	"	"
		SOAF	100	6,679.26	26th.	24th
781		RKOZ	100	6,704.08	"	"
		SAPO	100	6,667.77	"	"
		SPRK	100	6,638.69	"	"
Oct. 14/09	Mary	RTIV	100B	6,898.35	Oct. 26/09	Jany. 24/10
		RILR	100	6,988.39	"	"
		RHVI	100	6,918.07	"	"
		RRPF	100	6,841.00	"	"
		RTER	100	6,863.49	"	"
		SNEQ	100	6,872.17	"	"
		SNTZ	100	6,798.10	"	"
		SIQR	100	6,871.74	"	"
		SPEN	100	6,781.01	"	"
		SOVQ	100	6,935.15	"	"
Oct. /09	Tycob	PTQO	100	7,115.00	Nov. 8/09	Feby. 6/10
		QSSJ	100	7,117.77	"	"
		QGJY	100	6,981.50	"	"
		QFHT	100	6,990.27	"	"
		RHOD	100	6,836.85	"	"
		RNOE	100	7,052.16	"	"

EXHIBIT No. 662.

Abstract of Drafts of Steele, Miller & Co. on Bank of Mulhouse at Havre, from September 1st, 1909.

Dates	Cipher	Marks	No. of B/	Amt. Drafts	Date of Accp.	Date Due
		RSKT	100	6,924.52	Nov. 8/09	Feby. 6/10
		ROLB	100	7,251.91	"	"
		ROBO	100	7,179.31	"	"
		SGEO	100	7,135.84	"	"
		SRUC	100	7,018.23	"	"
		SURT	100	6,616.20	" at sight	Nov. 7/09
		SXRP	100	6,589.76	" "	"
		QEWS	100	7,148.02	9th "	8th
		Rose	100	7,066.58	" "	"
1909.						
Oct. 27	Fritz	QUAW	100	7,530.95	Nov. 10th at sight	Nov. 9/09
		QAVI	100	7,368.00	9th "	8th
		RSOS	100	7,233.80	10th "	9th
		RAAL	100	7,264.81	" "	"
		RNOR	100	7,069.53	" "	"
		RETJ	100	7,253.14	9th "	8th
		RSUR	100	7,331.45	" "	"
		RESW	100	7,316.00	" "	"
		SSRG	100	7,045.97	10th "	9
		SXYZ	100	7,045.96	9th "	8th

Oct. 28/09	Wagen.....	Q M I L	100B/	7,307.52	Nov. 10/09	at sight	Nov. 9/09
		R Y K Z	100	7,624.09	"	"	"
		R N I C	100	7,261.71	"	"	"
782		R B U G	100	7,227.56	"	"	"
		R E A B	100	7,232.46	"	"	"
		R E N A	100	7,261.89	"	"	"
		R G Y Z	100	7,301.61	"	"	"
		R O N Y	100	7,226.12	"	"	"
		S T O N	100	7,290.34	"	"	"
		S S S S	100	7,238.79	"	"	"
Nov. 2/09	Ryme	Q R G B	100B/	7,679.81	Nov. 15/09		Nov. 18/09
		Q E C N	100	7,688.18	"		"
		Q W I T	100	7,743.96	"		"
		R K I Q	100	7,560.00	"		"
		R O R C	100	7,626.19	"		"
		R R Z T	100	7,636.35	"		"
		R E A X	100	7,538.03	"		"
		S R T K	100	7,409.88	"		"
		S R L P	100	7,529.24	"		"
		S M A R	100	7,386.38	"		"
Nov. 3/09	Keach	R Y K N	100	7,435.60	Nov. 15th		Nov. 18th
		R Z Y Z	100	7,538.58	"		"
		R G I N	100	7,476.47	"		"
		R I N C	100	7,496.64	"		"

EXHIBIT No. 662.

Abstract of Drafts of Steele, Miller & Co. on Bank of Mulhouse at Hayre, from September 1st, 1909.

Dates	Cipher	Marks	No. of B/	Amt. Drafts	Date of Accp.	Date Due
		R A A P	100	7,483.50	Nov. 15th	Nov. 18th
		R C E A	100	7,543.71	"	"
		R G E V	100	7,571.79	"	"
		R O C S	100	7,515.77	"	"
		S A E C	100	7,441.41	"	"
		S T U R	100	7,349.38	"	"
Nov. 5/09	Adams	R E S C	100	7,252.27	Nov. 29th	Feby. 27/10
		A W A S	100	6,987.98	"	"
		R D F K	100	7,384.53	24th	Jany. 23/10
		R E C X	100	7,218.02	"	"
		S D R Y	100	7,194.85	"	"
		B X W Z	100	6,930.43	29th	Feby. 27th
		A P O T	100	6,987.54	"	"
		S L A T	100	7,148.76	17th	Nov. 20/09
		S D O A	100	7,268.65	"	"
		R S H I	100	7,182.65	"	"
Nov. 17/09	Caw	Q E R F	100B/	7,523.65	Nov. 29/09	Feby. 27/10
		Q F U R	100	7,467.31	"	"

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783		RFDU	100	7,542.42	"	"	
		RUPG	100	7,439.60	"	"	
		RFHI	100	7,419.78	"	"	
		RDEG	100	7,540.56	"	"	
		RMUL	100	7,470.39	30th	28th	
		RMNK	100	7,429.04	"	"	
		RWAT	100	7,422.86	"	"	
		SPCR	100	7,335.71	29th	27th	
Nov. 18th	FORD	REDB	100	7,321.37	Nov. 3rd.	Feby. 28–10	
		RENP	100	7,393.27	Dec. 8th	6th	
		SBIN	100	7,376.15	"	"	
		RSUT	100	7,421.94	"	"	
		REGA	100	7,389.13	"	"	
		QERY	100	7,490.28	"	"	
		RDSX	100	7,336.15	15th	Mch. 15th	
		RONE	100	7,322.63	"	"	
		RHRH	100	7,394.22	"	"	
		RMCK	100	7,372.98	18th	18th	
Dec. 4/09	Kitty	RNIP	100	7,334.12	Dec. 16/10	Mch. 16/10	
		RDIG	100	7,403.40	"	"	
		QRAK	100	7,413.41	"	"	
		RDYK	100	7,375.72	18th	18th	
		REGY	100	7,357.07	"	"	
		SBAO	100	7,319.05	"	"	

D VERTICAL IN BOOK

EXHIBIT No. 662.

Abstract of Drafts of Steele, Miller & Co. on Bank of Mulhouse at Havre, from September 1st, 1909.

Dates	Cipher	Marks	No. of B/	Amt. Drafts	Date of Accp.	Date Due
		RGNE	100	7,317.33	Dec. 21st	Mch. 21st
		RVAA	100	7,325.94	"	"
		RENR	100	7,243.95	22nd	22nd
		SKAG	100X	7,356.64	"	"
Dec. 27	Tunes	QBON	100	7,732.39	Jany. 7/10	April 7th
		RKAK	100	7,795.12	"	" 779512
		RJNT	100	7,794.63	"	"
		QVTA	100	7,717.59	"	"
		RJIC	100	7,713.68	10th	10th
		RDAR	100	7,734.21	"	"
		RURA	100	7,825.89	"	"
		QATR	100	7,948.81	"	"
		QMRM	100	7,758.05	11th	11th
		RDBO	100	7,682.82	"	"
Dec. 28/09	Tobbi	RDEA	100B/	7,334.10	Jany. 10/10	April 10/10
		RYMH	100	7,403.39	"	"
		RRGL	100	7,413.41	"	"
		QTER	100	7,376.30	"	"

		QQXN	100	7,357.07	"	"	
		QARR	100	7,319.05	"	"	
		QRED	100	7,317.33	"	"	
		RYTA	100	7,325.94	"	"	
		RGGZ	100	7,243.95	"	"	
		RPCO	100	7,356.65	"	"	
Jany. 10th	Bryan	QTOM	100	7,152.95	Feby. 2/10	May 3/10	
		QVAR	100	7,099.01	"	"	
		QTAT	100	7,048.97	"	"	
		RREN	100	7,077.83	"	"	
		RDOP	100	7,119.54	"	"	
		RDPU	100	7,041.24	"	"	
		RKJA	100	7,066.42	"	"	
		RKGN	100	7,064.47	"	"	
		RDET	100	7,035.38	"	"	
		RGSA	100	6,899.04	"	"	
Jany. 10th	Abrah	QBSC	100	7,158.27	Feby. 2/10	May 3/10	
		QRSS	100	7,140.43	"	"	
		RCAT	100	7,207.14	"	"	
		RLUM	100	7,051.92	"	"	
		RTSK	100	7,054.58	"	"	
		RSET	100	7,086.38	"	"	
		RDTN	100	7,031.18	"	"	
		RKKT	100	7,122.96	"	"	

EXHIBIT No. 662.

Abstract of Drafts of Steele, Miller & Co. on Bank of Mulhouse at Havre, from September 1st, 1909.

Dates	Cipher	Marks	No. of B/	Amt. Drafts	Date of Accp.	Date Due
		R D A K	100	7,053.84	Feby. 2/10	May 3/10
		R S R V	100	7,053.53	"	"
Jany. 24/10	Toosy	Q A T S	100	7,189.65	Feby. 5/10	May 6/10
		Q V N I	100	7,312.75	8th	9th
		R B S A	100	7,214.50	"	"
		Q A A R	100	7,247.98	"	"
		R J K S	100	7,158.68	"	"
		R H T S	100	7,260.83	"	"
		R E T U	100	7,305.42	"	"
		R E U H	100	7,282.42	"	"
		R D H O	100	7,225.70	"	"
		Q G H I	100	7,279.69	14th	15th

EXHIBIT No. 663.

Statement of Drafts of Steele, Miller & Co., Corinth, Miss., on Comptoir d'Escpt de Mulhouse at Havre, from September 1st, 1909.

Dates	Cipher	Marks	No. of B	Amt. Drafts	Dates of Acceptce.	Date of Maturity
Sept. 29th, 1909	Joint	M O Q	100	6,644.46	Oct. 26th	Jany. 23/10
		N E Q	100	6,532.02	"	"
		A I Q	100	6,842.17	Nov. 11th	Feby. 8th
		L E R	100	6,488.57	Oct. 26th	Jany. 23rd
		V V R	100	6,522.06	"	"
		W Y R	100	6,520.75	"	"
Oct. 5th	Toune	R X V D	100	6,294.83	Oct. 7th	Jany. 3rd/10
		R V C I	100	6,286.38	"	"
		Q I B S	100	6,394.57	8th	5th
		Q A V V	100	6,358.86	"	"
		Q T O M	100	6,377.44	"	"
		Q R V G	100	6,528.78	"	"
		R N V A	100	6,300.52	"	"
		R Z S I	50	3,192.98	"	"
Oct. 7th	Carol	Q W D E	100	6,487.00	Oct. 13th	10th
		R G P Ł	100	6,367.00	"	"
		Q E V A	100	6,364.33	"	"

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EXHIBIT No. 663.

Statement of Drafts of Steele, Miller & Co., Corinth, Miss., on Comptoir d'Escpt de Mulhouse at Havre, from September 1st, 1909.

Dates	Cipher	Marks	No. of B	Amt. Drafts	Dates of Acceptce.	Date of Maturity
		R N I P	80	5,029.48	Oct. 13th	Jany. 10th
		Q V A C	100	6,462.07	"	"
		R H O X	100	6,367.37	"	"
		Q O D P	100	6,418.14	14th	14th
		R E X Y	100	6,475.51	"	"
		R I V C	100	6,363.11	"	"
		Q W I N	100	6,432.17	"	"
		R I N P	20	1,286.94	22nd	22nd
Oct. 11th	Tom	R O B Y	103	6,520.32	Oct. 13th	19th
Oct. 5th/09	Dick	Q A E N	100	6,870.24	Oct. 20th	Jany. 17/10
		R I K S	100	6,936.06	"	"
		Q V C A	100	6,970.44	"	"
		R V O Y	100	6,895.23	"	"
		Q O K S	100	6,992.46	"	"
		Q X O P	100	7,075.44	22nd	19th
		R A Q W	100	6,818.52	"	"
		R W H A	75	5,110.51	26th	23rd

			RWHA	25	1,706.81	"	"
			REWQ	75	5,122.73	"	"
			"	25	1,759.46	"	"
			RISN	100	7,002.91	"	"
14242.							
Oct.	7/09	Fargo	QAIC	100	6,662.62	Oct. 20th	Jany. 17/10
			RHLE	100	6,711.71	"	"
			QSBM	100	6,646.37	"	"
786			RNEL	100	6,690.06	"	"
			RAOT	50	3,386.00	28th	24th
Oct.	7th	Harry	QEZI	100	6,446.99	20th	17th
			RQCO	100	6,366.45	21st	18th
			QANY	100	6,436.42	"	"
"	8th	Candy	RYWP	100	6,785.95	19 & 20	17th
			QIES	100	6,831.46	"	"
			QECH	100	6,735.84	"	"
			QVLI	100	6,848.50	"	"
			RCNA	100	6,713.13	"	"
			RWBD	100	6,763.93	"	"
			RBEI	100	6,605.36	"	"
			RSJP	100	6,674.06	"	"
			RNYS	100	6,763.66	"	"
			RQAC	100	6,791.65	"	"

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EXHIBIT No. 663.

Statement of Drafts of Steele, Miller & Co., Corinth, Miss., on Comptoir d'Escpt de Mulhouse at Havre, from September 1st, 1909.

Dates	Cipher	Marks	No. of B	Amt. Drafts	Dates of Acceptce.	Date of Maturity
Oct. 12th	Polly	QEHO	100	7,025.25	Oct. 30th	Jany. 27th
		RRST	100	6,952.64	28th	24th
		RAAG	100	6,906.49	30th	27th
		RLSE	100	6,861.02	"	"
		RBLV	100	6,865.67	29th	25th
		RWWA	100	6,981.25	28th	24th
		RLAY	100	6,839.33	"	"
		STCH	100	6,799.91	"	"
		SQNE	100	6,786.24	"	"
		SZKA	100	6,812.98	"	"
" 16th	Sadie	QEQQ	100	6,872.06	Oct. 29th	Jany. 25th
		QQEK	100	6,835.49	"	"
		RFFC	100	6,872.36	"	"
		RXYD	100	7,030.50	"	"
		RPUI	100	7,003.26	"	"
		RVAM	100	6,957.22	"	"
		RMMW	100	6,854.14	30th	27th
		QQEQ	100	6,870.87	"	"

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		RIAT	100	6,854.08	Nov. 5th	Jany. 28th
		QERT	100	6,932.44	"	"
" 16th	Grace	QDOF	100	7,085.72	"	"
		ROME	100	12,812.83	"	"
		RGGF	100	6,256.95	"	"
		RMOZ	100	6,820.60	"	"
		RIIN	100	6,895.45	Oct. 29th	25th
		RLEN	100	6,896.84	"	"
		RPQQ	100	35,840.58	"	"
		RRRK	100	6,828.17	"	"
		SEOA	100	6,823.22	Nov. 5th	28th
		KROX	100	6,721.15	"	"
Oct. 19th	Laute	QAQQ	100	6,832.22	Nov. 5th	Jany. 28th
		QEPT	100	7,145.43	"	"
787		RBYN	100	6,954.57	"	"
		RELE	100	6,817.62	"	"
		RADF	100	6,940.46	"	"
		RHVX	100	7,073.00	"	"
		RVEZ	100	6,961.76	"	"
		RVLX	100	6,965.09	"	"
		SRXP	100	6,837.15	"	"
		RKEP	100	6,949.60	"	"
Oct. 21st	Lolo	QVTH	100	7,048.15	Nov. 5th	Jany. 28, 1910
		QOMY	100	7,056.98	"	"

EXHIBIT No. 663.

Statement of Drafts of Steele, Miller & Co., Corinth, Miss., on Comptoir d'Escpt de Mulhouse at Havre, from September 1st, 1909.

Dates	Cipher	Marks	No. of B	Amt. Drafts	Dates of Acceptce.	Date of Maturity
		R P K T	100	6,967.31	Nov. 5th	Jany. 28, 1910
		R V R T	100	6,952.24	"	"
		R N V G	100	6,987.07	"	31st
		R O M A	100	6,815.36	"	Feby. 2nd
		R Y N A	100	6,998.23	"	"
		R J Q V	100	6,941.20	Nov. 10th	6th
		R H E R	100	6,985.88	5th	2nd
		R L E R	100	6,973.28	"	"
Oct. 21st	Frufru	Q O B I	100	7,305.96	Nov. 5th	Feby. 3rd
		Q V T L	100	5,172.16	"	2nd
		R A N D	100	6,987.83	"	"
		R A W K	100	6,972.14	"	"
		R M E M	100	7,317.21	"	"
Dec. 13/09	Mazy	R C P E	100B	7,506.23	Dec 23rd	Mch. 22/10
		R V E N	100	7,562.58	"	"
788		R D A T	100	7,485.52	"	"
		R H I K	100	7,448.79	"	"

		RDEF	100	7,503.85	"	"	
		RATV	100	7,423.95	"	"	
		SPVT	100	7,431.80	28th	28th	
		SGRI	100	7,461.50	23rd	22nd	
		SREG	100	7,373.36	"	"	
		SRIL	100	7,380.91	"	"	
Dec. 14th	Anne	RBAC	100	7,443.57	Dec. 30th	Mch. 29th	
		RTAG	100	7,529.97	27th	27th	
		RGYR	100	7,475.69	28th	28th	
		RACR	100	7,592.48	"	"	
		RDEM	100	7,446.10	29th	"	
		RDIT	100	7,477.75	30th	29th	
		RTNS	100	7,501.18	"	"	
		STAO	100	7,458.95	28th	28th	
		SCRE	100	7,377.47	30th	29th	
		STAG	100	7,431.70	"	"	
Jany. 29/10	Hazel	QVIT	100	7,161.71	Feby. 14/10	May 13/10	
		QWDN	100	7,145.26	"	"	
		QRAN	100	7,150.30	"	"	
		RMIS	100	7,341.58	15th	15th	
		RCON	100	7,327.82	"	"	
		RFIJ	100	7,327.06	"	"	
		RSPC	100	7,336.24	14th	13th	
		RBTR	100	7,134.14	"	"	

EXHIBIT No. 663.

Statement of Drafts of Steele, Miller & Co., Corinth, Miss., on Comptoir d'Escpt de Mulhouse at Havre, from September 1st, 1909.

Dates	Cipher	Marks	No. of B	Amt. Drafts	Dates of Acceptce.	Date of Maturity
		S O B I	100	7,108.13	Feby. 14th	May 13th
		B A I L	100	7,215.52	15th	15th
Feb. 3rd	Etta	Q M P A	100	7,280.33	Feby. 15th	May 15/10
		R S K X	100	7,264.19	"	"
789		R M V O	100	7,420.90	17th	"
		R H G A	100	7,494.36	"	17th
		Q B T K	100	7,608.58	"	"
		R S T E	100	7,607.64	"	"
		Q O J L	100	7,592.16	19th	19th
		S P R D	100	7,183.33	17th	17th
		Q I R C	100	7,375.86	"	"
		Q A S P	100	7,417.67	"	"

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Abstract of the Drawings of Steele, Miller & Co., Corinth, Miss., on "La Societé Génerale" du Havre, from September 1st, 1909.

Dates	Cipher	Marks	No. of B	Amt. of Drafts	Date of Acceptce.	Date of Payment
Augt. 27/09	Red	QKKN	100B			
		SINX	100	12,015.40	Sept. 3rd	Nov. 29/09
		SEAC	100			
		SSXX	100	12,019.75	"	"
		QEBC	100			
		QCC.N	100			
		QHEC	100	18,564.50	Augt. 31st	26th
		QQBK	100			
		RBOE	100	12,306.96	Sept. 3rd	29th
		RMOX	100	6,086.07	"	"
Augt. 30/09	Gray	SPAO	100			
		RWAB	100			
		QBAT	100	18,725.08	Sept. 2nd	Nov. 29/09
		RENP	100	6,313.30	"	"
		RNPN	100			
		SSKQ	100	12,473.74	"	"
		QARX	100	6,223.72	"	"
		RZBO	100			

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EXHIBIT No. 664.

Abstract of the Drawings of Steele, Miller & Co., Corinth, Miss., on "La Societé Generale" du Havre, from September 1st, 1909.

Dates	Cipher	Marks	No. of B	Amt. of Drafts	Date of Acceptce.	Date of Payment
		S O K K	100	12,337.45	Sept. 22d	Nov. 29/09
		R C R O	100	6,239.26	"	"
		R B O T	100		Sept. 10th	Dec. 6/10
Augt. 24/09	Brown	R K P T	100	12,363.48		
		S K P C	100			
		S C O E	100		"	"
		S C B T	100	18,433.36		
		Q R Q A	100	6,279.13	Sept. 9th	"
		R I C E	100			
		Q Q K X	100			
		R A F O	100			
		Q O K N	100	25,074.25	"	"
Augt. 27/09	Base	Q B O F	100B	12,510.70	Sept. 11/09	Dec. 8/09
		Q B C O	100			
791		R P Q Q	100	12,334.47	9th	6th
		R R R R	100			

		SPQE	100			
		ROAW	100			
		SPRK	100	25,579.20	"	"
		SKOM	100			
		ROAA	100			
		QOTT	100	12,410.05	"	"
Augt. 30/09	Ball	RKOK	100			
		RLEN	100	12,448.13	Sept. 9th	Dec. 6th
		RRBB	100	6,148.92	"	"
		QPOK	100	6,265.35	"	"
		QAEZ	100			
		ROME	100	12,503.40	"	"
		RCDO	100			
		REEN	100			
		SEAC	100	24,679.26	"	"
		ROTL	100			
Nov. 9/09	Bush	RHOT	100	7,493.69	Nov. 12th	Feby. 7th
		RERI	100	7,472.17	"	"
		RACY	100	7,499.30	"	"
		RHIN	100	7,354.50	"	"
		RENT	100	7,391.03	"	"
		RIFT	100	7,386.61	"	"
		ROBQ	100	7,482.57	"	"
		SVTY	100	7,283.78	"	"

Abstract of the Drawings of Steele, Miller & Co., Corinth, Miss., on "La Societé Génerale" du Havre, from September 1st, 1909.

Dates	Cipher	Marks	No. of B	Amt. of Drafts	Date of Acceptce.	Date of Payment
		S C A N	100	7,300.85	Nov. 12th	Feby. 7th
		S E R A	100	7,503.74	"	"
				P. T. O.		
1910.						
Feby. 7th	Emma	Q V N N	100B	7,701.04	Fbey. 21/10	May 19/10
		S D O H	100	7,365.21	"	"
792		Q V A E	100	7,527.26	"	"
		S A K H	100	7,368.54	"	"
		Q M T A	100	7,424.55	24th	23rd
		Q P L H	100	7,439.25	"	"
		R D F E	100	7,367.18	"	"
		Q R T Y	100	7,430.33	"	"
		Q D V B	100	7,340.10	"	"
		R A M V	100	7,680.01	"	"
Feby. 9/10	Dolly	Q T N E	100	7,614.43	Feby. 24/10	May 23/10
		R R S K	100	7,614.87	"	"
		Q R F H	100	7,580.01	"	"
		R F K L	100	7,621.75	"	"
		R S G B	100	7,446.28	"	"
		Q A N T	100	7,597.33	"	"
		R N P O	100	7,407.00	March 1st	25th
		R V N K	100	7,391.98	2nd	"
		R M P S	100	7,367.40	"	"
		Q S T R	100	7,401.82	"	"

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793 Copy of a Letter of Steele, Miller & Co., Cotton Merchants, Dated Feb. 11th, 1910, Addressed to Scheuch & Co., Havre:

Cable address
Stemil

L. C. Steele
J. H. Miller
C. H. G. Linde

Steele, Miller & Co.,
Cotton Merchants.

Corinth, Miss., U. S. A., 2/11/10.

Messrs. Scheuch & Co.,
Havre, France.

Gentlemen,—

Enclosed we beg to hand you five port bills of lading covering sgipments [shipments] per steamer "Guatemala" applying against various contracts as per slips attached, which kindly exchange against through bills of lading, returning the latter to this office at your earliest convenience.

We are doing all we can to see that the cotton for Comptoir de Mulhouse gets located without further delay in order to encourage these friends to loosen up for further reimbursement credits.

Kindly acknowledge receipt and oblige,

Very truly yours,
(Signed) STEELE, MILLER & CO.

C.H.G.L.N.

Mars:
E-51 RADF 100 Bs
E-36 RWBD 100 Bs
E-35 RNEL 100 Bs
E-35 QHIC 100 Bs
E-88 RGAP 100 Bs

Scheuch & Co. Exhibit No. 665.

794 Copy of a Letter of Scheuch & Co., Dated 18th Feb. 1910:

Scheuch & Co.
Havre.

Ferd. Scheuch Albert Schilling

Havre, 18th February, 1910.

J.K.
Messrs. Steele, Miller & Co.,
Corinth, Miss.

Dear Sirs:—

Referring to your favors of 5th and 8th instant we beg to say that we duly received your additions to your private code and that we changed the number of the contract cipher "Emma" to E133.

Enclosed please find your favor of the 5th which we return you having checked the future statement, and added what you need. You shall see thereof that there is nothing uncovered.

On your cable of the 15th, proposing to us to buy on joint account 500 bales average good middling 29/30 mm g. c. Memphis at 8.55 d. we wired in reply that we consider the price as too dear and stated on your demand what ecart rules here for 29/30 mm frs. 9.—which is exactly the premium paid here for that length.

We informed you further that banks refuse to open any further credit for consignment shipments owing to the unusual delay in your shipments and asked you to hurry them forward. We hope to arrange further credits after arrival of some large shipments. We quite agree with you that it is a poor policy to land too much cotton at the same time, but we are sure you easily understand bank's position who pay your drafts and don't get the cotton but after such a delay.

We received some days ago a telegram from the Cotton Commission Company asking us to open credits for a 20,000 bales consignment from you and we had to wire them the same as you that for the moment there is nothing to do. As Mr. Klemeyer wrotes us in his last letter that he could possible arrange credits with Bremen banks we adviced him to make a trial.

From your cable of to-day we note with thanks that you

authorize us to sell same 28/30 m/m staple for March / April delivery.

We beg to thank you for your remittance of $20,000— which have been paid to us by the Banque de Mulhouse.

and remaine dear Sirs,

Yours very truly,

(Signed) SCHEUCH & CO.

Scheuch & Co. Exhibit No. 666.

795 Copy of a Letter of Scheuch & Co., Addressed on Feb. 26th, 1910, to Steele, Miller & Co., Corinth, Miss.

Scheuch & Co.
Havre.

Ferd. Scheuch. Albert Schilling.

Havre, 26th February, 1910.

J.K.

Messrs. Steele, Miller & Co.
Corinth, Miss.

Dear Sirs:

Re to cables exchanged we had to inform you that unfortunately we were not able to arrange a further credit at the moment as on account of the heavy delay in your shipments so far banks want to await the arrival of all the invoiced cotton before they can give us new credits. We had asked you so often to hurry forward your shipments so to get the cotton before drafts here falling due, but you have not followed our advices and now we are at a standstill with all our bankers and we cannot force them to give us more credit. It was always understood that you could draw for more as long as your shipments were arriving in due course and we regret very much that you did not arrange it accordingly.

We remain, dear sirs,

Yours very truly,

(Signed) SCHEUCH & CO.

Scheuch & Co. Exhibit No. 667.

796 Copy of a Letter fo [of] Scheuch & Co., Dated March 18th, 1910, Addressed to Steele, Miller & Co., Corinth, Miss.

Scheuch & Co.
Havre.

Ferd. Scheuch. Albert Schilling.
J.K.

Havre, 18th March, 1910.

Messrs. Steele, Miller & Co.,
Corinth, Miss.

Dear Sirs:

We came duly in receipt of your favors of the 1st, 4th & 7th instant, contents of which had our best attention and beg to say that we have remitted your debit memo to the Societe d'Importation et de commission and as soon as we shall have collected the frs. 40.80 you shall get our credit note.

Concerning the 100 bls. contract No. E 130, we beg to thank you for the prompt attention to the matter.

Master's receipts covering 100 bls. RANC have been delivered to the Banque de Mulhouse for account of the Cotton Commission Co. We further are in receipt of master's receipts for 300 bls. per S/S "Kingstonian" abd "Californie."

We are very glad to say that our Mr. Schilling has recovered pretty well from his last illness. He is still a little suffering, but we hope he will be quite well in a few time.

Yours very truly,
(Signed) SCHEUCH & CO.

We would be very much obliged to you for hurrying forward all outstanding shipments to our port. The banks want to get the cotton here without further delay, & we expect you to do your utmost so we get all here next month:

Scheuch & Co. Exhibit No. 668.

797. Copy of a Letter of Scheuch & Co., Dated 2nd, of April, 1910, to Steele, Miller & Co., Corinth, Miss.

Scheuch & Co.
Havre.

Ferd. Scheuch. Albert Schilling.

April 2nd, 1910.

Messrs. Steele, Miller & Co.,
Corinth, Miss.

Dear Sirs—

The outturn of your late arrivals is falling off in grade very heavily & we find very little fullygoodmiddling in your "Q s" which are rather "gm," but nothing more. The "R's" also are not up in grade & many lots class only "strictmiddling," to "fullymiddling." We beg to call your attention to this fact & hope that the coming cotton will be up in every respect, grade & staple, as well as in weight.

We still await your remittance against loss in weight "Kingstonian" which we hope is en route although we have no reply from you. Bankers are claiming for the differences and therefore we must ask you kindly to remit always promptly whenever such losses are coming up.

Business here is generally very quiet & we hardly can sell a few hundred bales spots daily. Our Havre stock seems to be still sufficient for the demand & we don't expect in our market much change in this way.

Generally we are looking for steady markets as Liverpool & the Continent need still a good deal of cotton & there is no doubt this crop is a short one.

We hope that we shall soon receive all our cotton shipments as our bankers are claiming for their cotton. You have several French Line steamers loading in N'Orls so you can easily ship all and everything in April from N'Orls.

Yours very truly,
(Signed) SCHEUCH & CO.

Scheuch & Co. Exhibit No. 669.

798 Copy of Our Letter Dated April 16th, 1910, Addressed to Steele, Miller & Co.

Scheuch & Co.
Havre.

Ferd. Scheuch. Albert Schilling.

April 16th, 1910.

Messrs. Steele, Miller & Co.,
Corinth, Miss.

Dear Sirs:—

Referring to cables exchanged we have noted with much interest that all the balance of your cotton consigned to us will be shipped by str "Tampican" and "Louisiane" and we now await details.

Having checked your last consignment shipments from "Bryan" to "kaibe" as to the basis you have drawn for we find that you have overdrawn the frs 3 1/2 allowed by our bankers for gm. We have calculated that the amount over drawn is about frs. 40,000—and as our bankers are controlling this very exactly we have to cover this difference with them; therefore we would be obliged to you for remitting this amount by cable.

Further the grade of your shipments is falling off heavily what you will have remarked from our outturn sheets of s. s. "Kingstonian" "Memphian" and if the outturn of all the remaining cotton will be as low as those last outturns, there will be a very large difference in value against you. We have calculated that this loss may amount to frs. 120,000, in proportion to the outturn of "Kingstonian" and the "Memphian" and besides the eventual loss in weight on the about 23,000 bales still to receive here. Please examine these items and if you think that our remarks are correct, a cable remittance would oblige us, so we can cover the banks for those differences.

Spot business is very dull here and besides some small sales daily there is very little doing. Therefore we have decided in accordance with your Mr. Linde, to tender all the fully-middlings and below on futures, and so far we have delivered 1200 bales on April and we shall continue to do so, as the

carrying charges are too heavy to wait the end of the season when the demand may become better.

Yours very truly,

(Signed) SCHEUCH & CO.

Scheuch & Co. Exhibit No. 670.

799 Our cable Feb. 9th, 1910:
byatabacut—93 1/4
bapisbolve—14,86
levervloed—hurry forward shipment.

St. M. & Co. cable, Feb. 11th, 1910:
avacciare—are there any signs of improvement?
congestion—congestion
magazins—warehouses
avarientas—can we draw for
dalnimf—5000
corvorant—90 d/s Philbert Barrie Chalot & Co.
azorelle—what have you arranged
cordelejo—Banque de Mulhouse
anklage—have bought so far large quantities.
large
quantities
vodabzions—heavy boided selected Prairies cotton desirable in every respect.

Our cable Feb. 11th, 1910:
Xudienurak—we have sold 300 bales
burstbadbi—92 3/8
aperreo—consignment shipment
helicule—200 bales
cornicione—90 d/s on Credit Havrais, Havre
cantilenis—there is a distinct pause in the spot demand
congestion—congestion
improving—improving.

Our cable of 17th Feb., 1910:
lapisbeaul—14.40
bupelbaden—91 1/2
degluttivi—29/30

francbamag—francs 9
bank—bank
verlangen—request
leveryloed—hurry forward shipment
vermeidet—avoid
changing—changing
acalandus—Bill of Lading
apereonew—consignment shipment new
credit—credit
unmoeglich—impossible
before
all—all
cotton—cotton
moving—moving
quickly—quickly

St. M. & Co.'s cable Feb. 18th, 1910:
arrogeriez—up at present
dalnimfca—5000 about
yecamvilky—sailing this month further
zuhnalise—refer to our sale "Lise"
bccoslast—No. 46 last
cortafogo—Barrie Chalot & Co.
nurakyulia—300 bales cotton sailed per
800 memphian—S. S. "Memphian"
vilky—further think poor policy letting too much cotton land at same time
vilkyzehub—further you can sell
somevoasf—28/30 m/m
yaghideliv—March April delivery.

Our cable of Feb. 20th, 1910:
naumacha—refer to your sale sale. please cable name of steamer and date of sailing
cipherbush—cipher "Bush"
Our cable Feb. 21st, 1910:
cortesias—Societe Generale, Paris
meenides—please telegraph quickly in reply
leveryloed—hurry forward shipment
philbert—Barrie Chalot & Co.
mulhouse—Banque de Mulhouse
attardarsi—telegraph vessels name as soon as possible

levaverim—do not ship against further deliveries
beamstake—Paul Chardin
abliefern—deliver
aus—from
stock—stock

St. M. & Co.'s cable Feb. 22th, 1910:
bushyirve—"Bush" shipment via Mobile
memphian—S. S. "Memphian"
soldevetic—solde Leyland Line (balance Leyland Line)
Californian—S. S. "Californian."

St. M. & Co.'s cable Feb 26th, 1910:
vixebpegal—sell 400 bales against consignment shipment
furtherlast—further last
nurak—300 bales
cortafogo—Barrie Chalot & Co.
onmemphian—on S. S. "Memphian."
vilky—further
avarientas—can we
commutis—draw for
dalnimf—5000
corvorant—90 d/s Barrie Chalot & Co.

Our cable Feb. 26th, 1910:
xudilpegal—have sold 400 bales
bopod—89
barcinaron—we cannot arrange as you suggest
corvorant—90 d/s on Barrie Chalot & Co.
barracchi—at present
banks—banks
befaamd—will await arrival
all—all
shipments—shipments
before—before
behaving—they will accept
further—further

Our cable Feb. 26th, 1910:
coreclise—Credit Havrais
801 naumacha—refer to your sale of.....please cable name of steamer and date of sailing

joujucloco—"Jouju" "Cloco"
cecil—"Cecil"
macnides—please cable quickly in reply
bandhaak—are extremely annoyed.

St. M. & Co.'s cable Feb. 28th, 1910:
returned—returned
lycorexie—refer to your cable of 21st
zyrpe—read instead of Californian Kingstonian
further—further
lypornix—refer to your cable of 26th
Coreclise—Credit Havrais Kingstonian sailed Memphian
Californie—Californie
lexique—sails in a few days details later further
arrogeriez—up at present about
damenrolle—10,000 landing Havre
yaege—March further
avaunten—can you
comprimunt—cable name for reimbursement
sakonzudde—1200 documents already
nyvilky—New York further
gefahrlos—I am leaving for
nymonday—New York Monday sailing
arribabais—Wednesday or Thursday.

Our cable of Feb. 28th, 1910:
bapisbehun—14.58
bupelbadbi—91 3/8
bauerthun—it is impossible
comatorium—arrange a credit with bankers
bebung—on account of usual delay
levervloed—hurry forward shipment all.

Our cable of March 29th, 1910:
xudilpupus—have sold 600 bales
byata—93 Kingstonian arrived
basinervo—we have not yet received documents RVWV SEAC
babirosa—where are they
leuciana—how much are you shipping Virginie Honduras banks

lexcos—want cotton promptly shipped by a going vessel everything
bardagevera—we cannot wait any longer
baratistas—please attend to this matter immediately.

802 St. M. & Co.'s cable dated March 29th, 1910:
all Credit Havrais Societe Generale sails Virginie Honduras further everything except
damageable—6000 sailing Virginie Honduras is something left will transfer
vetic—Leyland Line sailing promptly balance
damageable—6000 sailing promptly either next
vespy—French Line or
vetic—Leyland Line
barratry—we do all we can

Our cable of April 14th, 1910:
conjugorum—please remit by telegraph $4000
mankleid—loss inweight Memphian
leucisco—how much have you shipped Honduras
leuciana—how much are you shipping Tampican Luisiane
levervloed—hurry forward shipment

St. M. & Co.'s cable of April 15th, 1910:
Honduras—Honduras
dalibarde—3600 balance consignments
levicoste—to leave on the Tampican Louisiane certain.

Our cable of April 16th, 1911:
Tampican—Tampican
lexicology—sailing on or about 19th April
damageable—6000
leugner—we are shipping some Texas
lexis—sails this or next week.

Our cable of April 19th, 1910:
naumacha—refer to your sale of ..... please cable name of steamer and date of sailing
coreclise—Credit Havrais, Havre, balance
pegalcloco—400 bales Cloco
meconcecil—100 bales Cecil
plouteora—500 bales Cora

radulbell—900 bales Bell
pupuscyrus—600 bales Cyrus
nuradares—300 bales Dares
reculmeer—1000 bales Meer
reculalex—1000 bales Alex
macnides—please telegraph quickly in reply.

St. M. & Co.'s cable of April 20th, 1911:
Cecilcoro—Cecil Cora
Bellycyrus—Bell Cyrus
daresall—Daeres all Honduras
lexically—sailing on the
arekeggia—April 12th
803 mecralex—Meer Alex all Louisiane Tampican Honduras
zrilezuadde—we are mailing documents
dakvenster—2400 Louisiane Tampican
lexigraphy—sails this day
damageable—6000
zcreisbamag—we mailed you on the 9th
zugit—documents asked for.

Our cable April 21st, 1910:
Honduras Tampican
leucisco—how much have you shipped
cortesias—Societe Generale

St. M. & Co.'s cable April 22nd, 1910:
radubemma—900 bales Emma
pegaldolly—400 bales Dolly Louisiane
nurakdolly—300 bales Dolly Virginie
mecondolly—100 bales Dolly Honduras balance
cortesiais—Societe Generale
magnetists—will telegraph as soon as we know.

Our cable April 22, 1911:
leverlocd—hurry forward shipment
baphiorum—as soon as possible.

Our cable April 26th, 1911:
lodderiger—please cable name of steamer vessel or line and possible date of sailing Ofen Naples RDPS.

Our cable April 25th, 1911:
consist—remittance has not yet arrived.

St. M. & Co.'s cable April 26th, 1911:
consaepis—we cannot remit just at present
cardophagi—New York market excited
zuardzudde—have sent you documents
reculmacul—1050 details later further Naples Ofen
magnetkies—will telegraph you more fully in a day of [or] two.

Our cable of April 26th, 1910:
lopadusa—rumors current of the suspension of
euch—you
axiopistic—is it true
zaubah—what is the amount bales
fehlend—missing
banquiers—bankers
chardin—Paul Chardin.

804 St. M. & Co.'s cable April 27th, 1911:
bauminsel—it is not true that
bis—so
soweit—far
daaber—but as
alle—all
tratten—drafts refused
comecador—cannot negociate exchange on—stops business
esfehlen—there are missing
pupuskaibe—600 bales Kaibe
nurakhazel—300 bales Hazel
morisdolly—200 bales Dolly
maculnaple—50 e [bales] Naple
nurakofen—300 bales Ofen
daintiness—700
etta—Etta.

St. M. & Co.'s cable April 28th, 1910:
daksparren—take up drafts against total 2100
dakshaken—50
wie folgt—as follows
pupuskaibe—600 Kaibe

vilkydolly—further Dolly
barolbonne—Invoice No. 2188
barolbotti—Invoice No. 2190
vilkyetta—further Etta
barolbelta—Invoice No. 2161
beskebespo—2164 2166
bessubetar—2167 2168
betcobetih—2169 2173
vilkyhazel—further Hazel
voice No. 2145
[Exhibit torn at this point] 150 2158
50 Naple
further Ofen
(Invoice No.) 2026
batucbawid—2027 2030
atrapo—you can cover at descretion
hedges—hedges.

Our cable April 29th, 1910:
ariolum—have covered
azevedo—what are you going to do about?

Exhibit No. 671.

805 DEPOSITION OF ALPHONSE RISS, TAKEN UNDER COMMISSION ISSUED OUT OF THE CLERK'S OFFICE, UNITED STATES DISTRICT COURT, EASTERN DISTRICT OF LOUISIANA, ON JULY 17TH, 1911, IN THE ABOVE ENTITLED AND NUMBERED CAUSE, ON BEHALF OF THE SOCIETE GENERALE, ONE OF THE DEFENDANTS.

Filed October 24, 1911.

United States District Court, Eastern District of Louisiana.

J. A. E. Pyle, Trustee,
vs. No. 14,242
Texas Transport and Terminal Company, et als.

806 Deposition of witnesses, produced, sworn and examined the 4th day of October in the year one thousand nine hundred and eleven, in the City of Havre, Republic of France, under and by virtue of a commission issued of the District Court of the United States holding session in and for the Eastern District of Louisiana in a certain cause therein pending and at issue, wherein J. P. [A.] E. Pyle, trustee, is complainant, and the Texas Terminal Company, et als., are defendants.

ALPHONSE RISS, of No. 58 Boulevard de Strasbourg, Havre, France, 59 years of age, being duly and publicly sworn, pursuant to the directions hereto annexed and examined, doth depose and say as follows:

Interrogatory No. 1:

Please state your name, age, residence and occupation. How long have you been engaged in your present occupation?

To the first interrogatory he saith:

My name is Alphonse Riss, 59 years of age. I am a citizen of the Republic of France and a resident therein. I am the managing director of the firm of Paul Chardin at Havre since 1883.

Interrogatory No. 2:

Do you know Paul Chardin, a defendant in the above entitled cause? If so, state whether the said Paul Chardin is an individual, firm or corporation. In what places is Paul Chardin engaged in business and what is the nature of said business in each place?

To the second interrogatory he saith:

I know very well the firm of Paul Chardin. Mr. Paul Chardin is an individual, who is the owner of the commercial firm of Paul Chardin, Paris, with a branch office at Havre. Paul Chardin is not a corporation. The firm of Paul Chardin is engaged, as well in Paris as in Havre in business, buying and selling all kinds of merchandises, just as generally practiced by merchants. The branch office at Havre is particularly engaged in the cotton import and commission business.

807 Interrogatory No. 3:

Are you connected with Paul Chardin? If so, in what capacity and for how long? State generally the nature and scope of your duties and authority.

To the third interrogatory he saith:

I am the manager and director of the firm of Paul Chardin at Havre, since 1883. My duties and authority consist in conducting and managing in a most general way all the Havre business. I have the general power of attorney of Mr. Paul Chardin and I am responsible to him for my management.

Interrogatory No. 4:

Do you know the firm of Scheuch and Company, of Havre, France. How long have you known said firm? Who are the individual members thereof? State, if you know, the business in which said firm was engaged during the time you have known it.

To the fourth interrogatory he saith:

I know the firm of Scheuch & Co., at Havre. I have known this firm since 8 or 9 years. The only members of this firm are Mr. Ferdinand Scheuch and Mr. Albert Schilling. Messrs. Scheuch & Co. are at the same time cotton importing mer-

chants and also selling agents, representing American cotton shippers.

Interrogatory No. 5:

State if you know, the general reputation enjoyed by said firm at Havre for business integrity and fair dealings from the time you first knew it down to and including May 7, 1910. State, if you know, its general reputation, during the same period, as to its solvency and financial responsibility. What sort of credit did it have at Havre?

To the fifth interrogatory he saith:

I began to do business with Scheuch & Co. in 1902 and I can state that since this date until 7th of May, 1910, this firm had always an excellent reputation at Havre, concerning its business integrity and fair dealings and it has always done a very important business with all the big cotton
808 firms here. Both of the members have at all time been considered as very serious, having a very good knowledge of their business. They started with a small capital, and in 1909 they were considered worth about frs. 700,000. The firm of Scheuch & Co. enjoyed a very good credit with the Havre banks and firms.

Interrogatory No. 6:

How was said firm regarded during said period as to its financial responsibility and business integrity by Paul Chardin and yourself? State whether or not during said period you become aware of anything which gave you any cause to doubt the solvency or honesty of said firm.

To the sixth interrogatory he saith:

This favorable opinion about the financial standing their honesty and integrity in business has always remained the same during the said period and neither Paul Chardin nor myself have never heard during the said time of anything which might have given any reason for the slightest doubt about their financial responsibility or honesty.

Interrogatory No. 8:

During said period did your firm have any business arrangements or dealings with the said Scheuch and Company? If

yes, please give a clear, full statement setting forth such business arrangements or dealings.

To the seventh interrogatory he saith:

Paul Chardin has never has [had] so called "arrangements d'affaires" with Scheuch & Co., but Paul Chardin bought frequently thro' Scheuch & Co., as agents of American cotton exporting firms, which they represented here, amongst which firms Steele, Miller & Co., Corinth, Miss. The cotton bought by Paul Chardin had to be shipped to him by the American firms according to the conditions, which were stipulated by contracts. These conditions were varying. Some times the contracts were made under "cif & 6%" terms and the cotton had to be shipped then at a certain period from the States to Havre and some times Paul Chardin bought cotton to be delivered according to the contracts at a certain period at Havre, to which kind of contracts the 1000 bales
809 referred to in this lawsuit are belonging.

A special condition between Paul Chardin and Steele, Miller & Co., for the 1000 bales in question was the faculty of Paul Chardin, to reject the cotton, which would not turn out according to the quality or staple of the contracts, instead of receiving an allowance by way of arbitration as usually practiced.

Steele, Miller & Co. had to reimburse themselves for the sale price of the cotton shipped to Paul Chardin in drawing on Paul Chardin, Paris, at 60 days' sight documentary drafts. The drawing was done for the net invoice amount that means after deduction of the freight, a banking commission of 3/16% and the commission of 1% for Scheuch & Co., as usually done.

Further it happened also that Paul Chardin bought from Scheuch & Co., personally very important quantities of cotton on the spot. This business was done by Scheuch & Co. under their own name as merchants.

Interrogatory No. 8:

If, in answer to previous interrogatories, you have stated that Paul Chardin bought cotton from or through Scheuch and Company, please state how such sales were effected and the purchase price paid.

If you have stated that the arrangement involved the drawing of drafts on Paul Chardin, please state by whom said drafts

were drawn, how the amounts of said drafts were determined, and what documents were to accompany said drafts.

What arrangements, if any, did Paul Chardin have with Scheuch and Company in respect to the sale of futures in connection with the drawing or acceptance of any such drafts? Explain in whose name futures were sold and what was the purpose of such sale of futures.

To the eighth interrogatory he saith:

The purchases, which Paul Chardin made from American shippers, represented by Scheuch & Co., were effected on firm offers, which Scheuch & Co. submitted to me in the name of the American shippers, and as stated already, it was always understood that these shippers had to make themselves pay for the selling price of the cotton, in drawing documentary drafts on Paul Chardin, Paris, to which through bills of lading, insurance certificates and invoices had to be attached. The invoices for the cotton, which Paul Chardin bought this way thro' the intervention of Scheuch & Co. from the American shippers, were some times made out in the name of Paul Chardin, some times in the name of Scheuch & Co., without distinction. The through bills of lading and other documents, which accompanied the drafts, were handed over to Paul Chardin against acceptance of the said drafts. Paul Chardin paid those drafts on expiration, and by this way he paid the purchase price of his cotton, which he had bought. Paul Chardin had no arrangement with Scheuch & Co., or the American sellers concerning the futures to be sold as a hedge against the cotton relating to the said acceptances. The futures, which Paul Chardin sold against his purchasers of cotton, were effected by himself and under his own name.

Interrogatory No. 9:

Please state whether or not Paul Chardin would have authorized the drawing of said drafts or would have accepted the same if he had not believed that on acceptance thereof be [he] acquired title to and possession and control of the cotton described in the drafts.

To the ninth interrogatory he saith:

Paul Chardin or myself would never have authorized the

drawing on him of those drafts, nor would be ever have accepted any of such drafts if he and myself would not have been absolutely convinced, that Paul Chardin, in receiving the through bills of lading and other documents, attached against his acceptance acquired title to and possession and control of the cotton described in the drafts.

Interrogatory No. 10:

State whether or not Paul Chardin had any interest in or knowledge of the contracts or arrangements between Scheuch and Company and the shippers of the cotton covered by such drafts?

State whether or not the said Paul Chardin ex-
811 tended or intended to extend any credit to said shippers of the cotton.

To the tenth interrogatory he saith:

Paul Chardin has never had any knowledge of or interest in the contracts or arrangements which Scheuch & Co. may have had with American cotton shippers, who were drawing on him drafts. Paul Chardin has never had the intention to give and has never given any credit to any American cotton shipper nor to Scheuch & Co. He has never authorized to draw on his firm but for the amounts of merchandise, which he had bought for his own account from his sellers, and as a method of payment of the purchase price in execution of the contracts.

Interrogatory No. 11:

Do you know the firm of Steele, Miller and Company or any of its individual members? What is the nature or extent of your acquaintance with said firm or its individual members?

To the eleventh interrogatory he saith:

I know the firm of Steele, Miller & Co. because I have done business with that firm thro' Scheuch & Co. (who were their agents at Havre), since 16th of October, 1907. I don't know any other member of that firm but Mr. Linde, whom I have seen at Havre when he was a clerk in the office of Scheuch & Co.

Interrogatory No. 12:

While the aforesaid business dealings were going on be-

tween Paul Chardin and Scheuch and Company, what knowledge of or interest in the contracts or arrangements between Scheuch and Company and Steele, Miller and Company did Paul Chardin have?

State whether or not Paul Chardin ever extended or intended to extend any credit to the said Steele, Miller and Company.

To the twelfth interrogatory he saith:

Paul Chardin has never had any interest in the arrangements or contracts between Scheuch & Co. and
812 Steele, Miller & Co. He has never had any knowledge of those contracts or arrangements, which did not regard him in any way. Never Paul Chardin has had the intention to give nor given any credit to Steele, Miller & Co.

Interrogatory No. 13:

This is a suit in which J. A. E. Pyle, trustee in bankruptcy of Steele, Miller and Company is suing to recover 1000 bales of cotton (less a shortage of six bales) or the value thereof, on the ground that the same were transferred by Steele, Miller and Company, while insolvent to Scheuch and Company or Paul Chardin with the intent to prefer Scheuch and Company or Paul Chardin or both of them—the cotton in question being marked and numbered as follows:

100 bales of cotton marked R M U I 1/100
100 bales of cotton marked R T H F 1/100
100 bales of cotton marked R B X K 1/100
100 bales of cotton marked R D G B 1/100
100 bales of cotton marked R N A M 1/100
100 bales of cotton marked R M B E 1/100
100 bales of cotton marked R I N O 1/100
100 bales of cotton marked R S O U 1/100
100 bales of cotton marked R T P N 1/100
100 bales of cotton marked R N O I 1/100

Please state whether Paul Chardin ever accepted any drafts drawn by Steele, Miller and Company against cotton so marked and numbered. If yes, please state when and by whom said drafts were presented for acceptance and the dates of acceptance.

What documents were attached to each of said drafts when presented for acceptance? What became of said documents when said drafts were accepted? If you say that they were delivered to the acceptor of the drafts, state whether or not they have since remained in his possession or subject to his control.

Have the drafts since been paid? If so, when and by whom?

Please annex as part of your answer to this interrogatory the said ten drafts; and if you have answered that there were attached thereto bills of lading, insurance certificates and invoices, please likewise annex to each draft the bill of lading, insurance certificate and invoice attached thereto.

813 To the thirteenth interrogatory he saith:

Paul Chardin has accepted the drafts of Steele, Miller & Co., according to the statement, which I annex to this deposition as exhibit No. 1 against 1000 bales of cotton marked and numbered as per my statement. The ten drafts have been presented for acceptance to Paul Chardin by the different banks or bankers and at the various dates indicated on that statement and accepted by Paul Chardin, on the days also indicated in the statement.

Each draft, when presented for acceptance, was accompanied by through bills of lading in duplicate, original and duplicate. Insurance certificates in duplicate, original and duplicate, and one invoice. All these documents have been handed over to Paul Chardin against his acceptance (as per general custom) of the drafts, to which they were attached.

Paul Chardin has paid each draft on its expiration and the documents which accompanied those drafts are in his possession.

I annex to this deposition as exhibits No. 2 to No. 41 the drafts in question as well as the duplicates of all those through bills of lading, insurance certificates and invoices, referring to the said cotton. I keep in my possession here the originals of those through bills of lading.

Interrogatory No. 14:

State whether or not the said Paul Chardin had any reason at the time for not believing that the bills of lading attached

to the drafts were genuine. What was the belief of Paul Chardin on the subject?

What, if any, reason had Paul Chardin at the time for not believing that the cotton described in the said drafts and the bills of lading had been actually shipped and was on the way? What was the belief of Paul Chardin on the subject?

What was the belief of Paul Chardin in respect to the transfer to him of said bills of lading and his possession
814 thereof being sufficient to give him possession and dominion over said cotton and entitling him to receive the same on its arrival?

To the fourteenth interrogatory he saith:

Paul Chardin had no reason whatever at that time or at any other time for not believing that the through bills of lading, attached to the drafts in question were genuine, but he had the conviction that those through bills of lading were genuine and perfectly correct; that the cotton described therein had been really delivered to and received by the railroads and forwarded by them to Havre, and that the possession of the said through bills of lading gave him full possession of and dominion over the said 1000 bales of cotton and entitled him to receive this cotton on its arrival at Havre, so much more as in all similar preceding dealings, he has had, the cotton had always been delivered to him on its arrival at Havre on those through bills of lading accompanying the drafts.

Interrogatory No. 15:

If, in answer to previous interrogatories, you have stated that Paul Chardin believed that said bills of lading were genuine, that the cotton described therein and in the drafts had been actually shipped and was on its way to Havre, and that the transfer to him of said bills of lading and his possession thereof gave him possession of and dominion over said cotton and entitled him to receive the same on its arrival, state what effect said beliefs had upon the action of the said Paul Chardin in accepting said drafts. If Paul Chardin had not entertained such belief, would he have accepted, or would he have refused to accept, said drafts?

To the fifteenth interrogatory he saith:

If Paul Chardin would not have been positively convinced

that the that the ten through bills of lading were genuine and that the rights which he acquired in accepting those drafts against delivery of the documents, were in no way
815 whatever doubtful, he never would have accepted any of such drafts to which those documents were attached. If he would have had the slightest doubt, he would have, quite naturally, refused to accept said drafts. His full confidence in the authenticity of those documents is proven alone by his acceptance of the said drafts.

Interrogatory No. 16:

Did the said Paul Chardin ever receive any bills of lading issued by the Compagnie Generale Transatlantique, each covering 100 bales of cotton, corresponding with the marks and numbers of the ten lots of 100 bales of cotton above referred to?

If yes, state when and how Paul Chardin received said bills of lading and whether a letter or note accompanied the same? Were there two sets of said bills of lading? State what has become of the originals. Annex the other set of said bills of lading to your answer to this interrogatory. Annex also the letter or letters, if any, accompanied the bills of lading, and state whether the same are truly the letters which Paul Chardin received at the time, and from whom they were received.

To the sixteenth interrogatory he saith:

Paul Chardin has received those custody bills of lading issued by the Compagnie Generale Transatlantique, covering each hundred bales of cotton with a shortage of totally 6 bales on the 1000 bales, corresponding with the marks and numbers of the ten lots of cotton above referred to. Those custody bills of lading have been handed over to Paul Chardin in his office at Havre by Scheuch & Co., viz.; seven on 3rd of May, 1910, and three on 7th of May, 1910, accompanied by the two notes written by Scheuch & Co., which I annex under No. 42 and No. 43 as exhibits to this deposition. These are truly the two notes, which accompanied the said custody bills of lading and which have been received by Paul Chardin on the dates indicated therein and brought to our office by some clerk of Scheuch & Co. Each of the custody bills of lading were in duplicate, original and duplicate. The originals have never

left the possession of Paul Chardin and are still in
816 his possession and control.

I annex to this present deposition as exhibits under No. 44 to No. 53 the duplicates of each of those custody bills of lading and I keep in my possession the originals.

Interrogatory No. 17:

At the time Paul Chardin received the said bills of lading of the Compagnie Generale Transatlantique, hereafter called custody bills of lading, did he or you know that the said bills of lading attached to the drafts were not genuine, but were forged or bogus?

Did you or the said Paul Chardin know or believe at the time that said custody bills of lading represented cotton acquired and shipped by Steele, Miller and Company subsequently to the drawing and forwarding of the said drafts and the said attached bills of lading or did you and Paul Chardin believe that said custody bills of lading represented the same cotton as the bills of lading attached to the drafts apparently represented?

What knowledge or information had you or the said Paul Chardin at any time prior to the receipt of the said custody bills of lading that Steele, Miller and Company intended to procure and forward to Paul Chardin said custody bills of lading?

It is charged on behalf of the complainant that at some time subsequent to the date of said drafts and the attached bills of lading Steele, Miller and Company acquired and assembled one thousand bales of cotton, caused the same to be marked and numbered to correspond with the numbers and marks of the cotton described in the said drafts, and caused the same to be shipped to New Orleans and thence by steamer of the Compagnie Generale Transatlantique to Havre, being the same cotton represented by the said custody bills of lading. State what knowledge or information you or the said Paul Chardin had of these alleged acts of Steele, Miller and Company at the time Paul Chardin received said custody bills of lading.

817 To the seventeenth interrogatory he saith:

At the time Paul Chardin received the said custody bills of lading neither Paul Chardin nor myself

knew or had any reason to know or to believe that the through bills of lading attached to the drafts in question were not genuine and that they had been falsed or were bogus. Neither Paul Chardin nor myself had any knowledge or belief that the custody bills of lading were representing cotton, which is said to have been acquired and shipped by Steele, Miller & Co., subsequently to the drawing and forwarding of the said drafts with the said through bills of lading. Paul Chardin and myself believed that the custody bills of lading represented exactly the same cotton as the said through bills of lading attached to the drafts, which he had already in hands since his acceptances.

Neither Paul Chardin nor myself knew or had been informed before receiving those custody bills of lading, that they were existing, and that we would receive same and that consequently Steele, Miller & Co. have had the intention to procure and forward same to Paul Chardin.

At the time Paul Chardin received the said custody bills of lading neither Paul Chardin, nor myself, had any knowledge or information, that sometime after the dates of the said drafts and the through bills of lading attached thereto, Steele, Miller & Co. had acquired and assembled one thousand bales of cotton, has caused the same to be marked and numbered to correspond with the marks and numbers of the cotton described in the said drafts and caused the same to be shipped to New Orleans and from there to Havre by steamer of the French Line, the same cotton being represented by the said custody bills of lading.

Interrogatory No. 18:

Please state whether on any prior occasion or occasions Paul Chardin had received similar custody bills of lading purporting to represent the same cotton covered
818 by through bills of lading attached to drafts for the price of cotton, which had been previously accepted be him. If yes, state on what occasions, and what, if any, explanations were given, and whether the same were believed by Paul Chardin. Please answer this question fully.

What effect had such previous experience and explanation in causing Paul Chardin to suspect or not to suspect fraud or wrong on the part of Steele, Miller and Company when he

received said duplicating custody bills of lading covering the said one thousand bales of cotton?

To the eighteenth interrogatory he saith:

Paul Chardin had never received an any prior occasion similar custody bills of lading or port bills of lading, purporting to represent the same cotton, covered by through bills of lading, attached to drafts accepted by him for the purchase price of cotton. Under these circumstances I have nothing to reply to the rest of this question.

Interrogatory No 19:

State, if you know, when and how the said Paul Chardin, or any representative of his, learned for the first time that the said bills of lading attached to the said drafts were forged or bogus, or were claimed to be forged or bogus.

State, if you know, when and how the said Paul Chardin, or any representative of his, learned for the first time that said ten custody bills of lading did not cover, or were claimed not to cover, cotton shipped at the date of the said bills of lading attached to the said drafts, but covered, or were claimed to cover, cotton subsequently acquired and shipped by Steele, Miller and Company.

To the nineteenth interrogatory he saith:

On the 8th of May, 1910, we have been informed by Scheuch & Co. that proceedings have been instituted on 7th of May in the United States District Court of New
819 Orleans, which resulted in preventing the transportation of the 994 bales of cotton by steamer "Texas" to Havre.

Paul Chardin and I learned from that report for the first time that the 1000 bales, which he had paid for in paying the drafts, which he had accepted, might not have been shipped on the dates, which he believed viz.: on January 24th, 25th, and 26th, 1910, as indicated on the said through bills of lading, and that the said custody bills of lading were pretended to cover cotton, which had been acquired and forwarded subsequently by Steele, Miller & Co.

Interrogatory No. 20:

It is charged by the complainant that at the time Steele,

Miller and Company delivered the cotton covered by the said custody bills of lading to the Compagnie Generale Transatlantique or at the time it forwarded the said custody bills of lading at Havre or at the time the same came into the physical possession of Paul Chardin the said Paul Chardin knew or ought to have known that Steele, Miller and Company intended thereby to prefer said Paul Chardin over their other creditors.

Please state whether such charge is true at any of said times and give the reasons or facts upon which your answer is based.

To the twentieth interrogatory he saith:

Paul Chardin, or myself, have never known nor suspected, nor had any reasonable ground for believing or suspecting at any time mentioned hereafter, that Steele, Miller & Co. would have had the intention to give any preference to him over their creditors. This is true not only at the time when Steele, Miller & Co. delivered to the French Line the cotton covered by those custody bills of lading (besides this delivery has been effected by Steele, Miller & Co. without the knowledge of Paul Chardin), but this is also true at the time when Steele, Miller & Co. have forwarded the custody bills of lading to Havre (always without the knowledge of Paul Chardin.) This is still true on the dates of 3rd and 7th of May, 1910, when the said custody bills of lading have been remitted to and came into the physical possession of Paul Chardin.

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Paul Chardin has never known or suspected, nor had he any reason to believe or to suspect any intention of Steele, Miller & Co. to give him a preference by those custody bills of lading to the prejudice of their other creditors, because these custody bills of lading were relating to the same marks and numbers as the through bills of lading, since a long time in his possession. Paul Chardin has never even at the dates of the 3rd and 7th of May, 1910, which was the only moment that he had knowledge of the financial situation of Steele, Miller & Co., without, however, knowing any details, looked upon it, that there could have been any competition of other creditors of Steele, Miller & Co. for the same cotton, which he considered as belonging to him since the time of his acceptance of said drafts.

Interrogatory No. 21:

When Paul Chardin received the said custody bills of lading did he know or believe that he was thereby receiving an interest or right in or to the cotton purporting to be covered thereby in addition to what he believed he already had as the acceptor of the said ten drafts and the holder of the said bills of lading attached thereto, or as the purchaser of said cotton?

To the twenty-first interrogatory he saith:

When Paul Chardin received the said custody bills of lading he did not know or believe that he acquired thereby another interest or right in or to the cotton purporting to be covered by the same in addition to which he considered and believed he had already as the acceptor of the said ten drafts and the holder and owner of the through bills of lading, which were attached to the ten said drafts.

Paul Chardin has believed that the delivery of the said custody bills of lading was only the continuation of the operation, which consisted from his side in the purchase of the
821 1000 bales of cotton and the acceptance of the documentary drafts drawn against this cotton on him by Steele, Miller & So.

Interrogatory No. 22:

Please state fully and in detail the extent and nature of the knowledge or information of Paul Chardin as to the solvency or insolvency of Steele, Miller and Company at the time he accepted said ten drafs, at the date of said custody bills of lading and at the dates when the same came into the actual physical possession of said Paul Chardin. Give the nature and extent and the sources of Paul Chardin's information on the subject from day to day from the date of the reported failure of Knight, Yancey and Company.

If in answer to previous question you state that on April 29th, 1910, a cable was received by Scheuch and Company from Steele, Miller and Company announcing that the latter had suspended payment, state what knowledge or information the said Paul Chardin then had as to the assets or liabilities of Steele, Miller and Company or as to the sufficiency of their property at a fair valuation to pay their debts.

To the twenty-second interrogatory he saith:

When Paul Chardin accepted the ten said drafts against

documents relating to the 1000 bales of cotton in question, viz., on 11th and 12th of February, 1910, he had no knowledge whatever of the unfavorable financial situation of Steele, Miller & Co. On the contrary, he had the greatest confidence in the solvability of that firm. This was the same on the dates of 19th, 20th, 21st, 23rd and 25th of April, under which dates those custody bills of lading have been issued. But when on 3rd and 7th of May, 1910, Scheuch & Co. handed over to him the said custody bills of lading, so that he came into the physical possession of same, Paul Chardin knew since the 29th of April, 1910, that Steele, Miller & Co. were reported to have suspended their payments. I deny positively and absolutely that I, Paul Chardin, his managers or officers knew
822 or had any reason to believe, that Steele, Miller & Co. were insolvent or in difficulties at the moment when Paul Chardin accepted the said ten drafts or at the time when the 1000 bales were forwarded or at any time prior to the day when the information of the suspension of Steele, Miller & Co. reached Havre under circumstances which I have explained fully heretofore.

On the 20th of April it was reported at Liverpool that Knight, Yancey & Co. were in difficulties; this information was known at Havre on 21st of the same month. There were no rumors up to that date about Steele, Miller & Co. and only on Saturday 23rd of April Scheuch & Co. said that they had received some telegraphic information from Bremen, stating that there was a bank which had refused to accept drafts of Steele, Miller & Co., but that this was only as a matter of precaution on account of the pretended frauds of Knight, Yancey & Co. and without any knowledge that Steele, Miller & Co. had acted in the same way. Scheuch & Co. were asked to cable to Steele, Miller & Co. for informations. Afterwards on the evening of the 26th of April, 1910, a firm at Havre had received a cable from New Orleans announcing the failure of Steele, Miller & Co., but on the next day the same firm received another cable from the same correspondent telling it not to reveal the telegram of the day before, because the information was not confirmed. Finally on 29th of April, 1910, Scheuch & Co. informed us that Steele, Miller & Co. were reported to have suspended payment. The foregoing constitutes all of the information which Paul Chardin, myself or

any officer of the firm had respecting the insolvency of [or] failure of Steele, Miller & Co. prior to 7th of May, 1910.

Paul Chardin had at that time no knowledge or information about the amount of the assets and liabilities of Steele, Miller & Co. and about which he even does not know any details up to date.

823 Interrogatory No. 23:

If, in answer to previous interrogatories, you have stated that Paul Chardin believed that the custody bills of lading represented the same cotton which had been paid for by the acceptance of the said ten drafts and which he was entitled to receive, state what effect, if any, knowledge of the insolvency of Steele, Miller and Company by Paul Chardin at the date of said custody bills of lading or at the date when they came into his physical possession would have had upon his belief that he was receiving only cotton to which he was entitled.

To the twenty-third interrogatory he saith:

From the foregoing deposition results the fact that Paul Chardin did not have any knowledge or information about the insolvency of Steele, Miller & Co. at the dates which are indicated on the custody bills of lading, viz., 19th, 20th, 21st, 23rd and 25th of April, 1910, but if we knew the suspension of payment of Steele, Miller & Co. on 3rd and 7th of May, 1910, when those custody bills of lading were delivered into the physical possession of Paul Chardin, this knowledge had been without any effect upon the perfect confidence and belief in the solidity of his rights on the 1000 bales of cotton resulting from the acceptance of the drafts with through bills of lading attached to, relating to this merchandise, because Paul Chardin considered that the custody bills of lading represented the same cotton as that for which he had paid the purchase price in accepting the ten documentary drafts and he believed that he alone had the right to receive the said 1000 bales of cotton on its arrival at Havre. The only effect which the knowledge of the suspension of Steele, Miller & Co. had on Paul Chardin was to keep the through bills of lading relating to the 1000 bales of cotton together with the custody bills of lading. Everybody will admit that a firm in suspension of payment does not offer the same guarantee of confidence as a firm

in good standing. This explains sufficiently why Paul Chardin preferred to keep the through bills of lading and the
824 custody bills relating to a merchandise which belonged to him as the buyer of it and in which Steele, Miller & Co. had no more right at all.

Interrogatory No. 24:

State, if you know, the financial condition of Scheuch and Company and the individual members of said firm, and how long they have been in such financial condition.

To the twenty-fourth interrogatory he saith:

The firm of Scheuch & Co. was reported to possess a capital of about Frs. 700,000 in 1909, according to the informations which were known at Havre. It is also a fact that Scheuch & Co. have started with a very small capital and that they had succeeded to arrive at this good financial standing and general situation by their proper, assiduous work.

Interrogatory No. 25:

There has been offered in evidence on behalf of the complainant in this cause a copy of a publication at Havre called the Bulletin de Correspondence, of date April 27, 1910, which contains the following:

"Nous avons parle, hier, d'une nouvelle faillite aux Estats-Uns. A ce propos, on a recu, de Liverpool, le telegramme suivant; Plusieurs Maisons de coton seraient atteintes par la faillite de la Maison Steele, Miller & Co. de Memphis, qui faisait de nombreuses affairs avec l'Europe."

And a copy of the same publication dated April 28, 1910, which contains the following:

"Cette semaine, les marches ont ete influences par deux sortes d'evements. En premier lieu, on a apprais la faillite de deux Maisons d'exportation des Estats-Unis; si le details donnes se pouvaient que semer la mefiance et, par suite, amener un ratentissement des affairs, per contre, ils devaient contribuer au raffermissement de cours, puisqu'ils indiquaient law possibilite de ne pas etre livre de cotton achete, du moins dans le delais prevvus. Il est a esperer, d'ailleurs, qu'l y a de l'exag-

eration dans toutes les rumeurs mises en circulation et que ce qui vient des e passer aura surtout pour resultat de fairs rechercher les moyens qui assureront une plus grande securite a ceux qui doivent importer du Coton."

Please state whether the quoted paragraphs from said paper, or either of them, was read or known at the time by you or any representative of Paul Chardin. Please state,
825 if you know, any reports or information which came to you or Paul Chardin at the time of said publication which tended to confirm or to discredit or cast doubt upon the correctness of the statements in said quoted paragraphs.

To the twenty-fifth interrogatory he saith:

The Bulletin de Correspondence appears every day at about 6:30 p. m., and I have generally a look into it on the next morning. I cannot state today if I really read the paragraphs referred to, but anyhow I would not have attached a great importance to it, because this Bulletin is publishing all kinds of news about the cotton trade of the world, without guaranteeing the correctness of those articles.

Interrogatory No. 26:

There has been offered in evidence on behalf of the complainant in this cause a copy of a publication called the Liverpool Daily Post and Liverpool Mercury of date April 27, 1910, which begins with the following headlines:

"Cotton Market Outlook.
Another American Firm
Suspends Payment.

Disturbing Succession of
Unsettling News.
The Knight Yancey Position.
Losses Smaller Than Originally Feared."

And the first paragraph of which is as follows:

"The Liverpool cotton market has received further shocks today—first, by the alarming reports of new crop damage from frost, which many of the morning papers treated in 'scare' fashion; and later by the statement that another Ameri-

can firm, Messrs. Steele, Miller and Co. of Memphis, had suspended payment. Liverpool, we understand, is not largely affected by the failure, the losses falling chiefly on Bremen importers."

Please state whether the above article from said paper was read or known at the time by you or any representative of Paul Chardin. Did you or any representative of the
826 said Paul Chardin receive any reports or information about the time of said publication which tended to confirm or to discredit and cast doubt upon the correctness of the statements in said quoted paragraphs? If so, state, if you have not already done so, what were said reports or information.

To the twenty-sixth interrogatory he saith:

Neither Paul Chardin nor myself nor any other officer of the firm have read or known the articles from said newspapers and I hear of same from [for] the first time by this interrogatory.

Interrogatory No. 27:

Please state whether Paul Chardin had any other relation to or right or interest in the said cotton against which the said ten drafts were drawn other than his right or interest as a banker accepting said drafts. Please state fully the facts upon which your answer to this interrogatory is based.

To the twenty-seventh interrogatory he saith:

The 1000 bales of cotton per steamer "Texas" have been forwarded by Steele, Miller & Co. to Paul Chardin not in virtue of a "credit de remboursement," which Paul Chardin had opened to Steele, Miller & Co. as their bankers, but in fulfillment of a certain number of contracts, by which Steele, Miller & Co. had sold to Paul Chardin a certain quantity of cotton, to be delivered gradually every month. All the shipments which Steele, Miller & Co. have made to Paul Chardin were effected against the said contracts, closed between both, and the drafts drawn by Steele, Miller & Co. on Paul Chardin have never had any other reasons as to settle the purchase price due by Paul Chardin to Steele, Miller & Co. in virtue of the said contracts. Therefore, Paul Chardin expected the

1000 bales of cotton as the buyer of it and he considered himself as such.

Interrogatory No. 28:

Do you know, or can you set forth, any other matter or thing which may be a benefit or advantage to the parties at issue in this cause, or either of them, or that may be material to the subject of this your examination or the matters
827 in question in this cause? If yea, set forth the same fully and at large in your answer.

To the twenty-eighth interrogatory he saith:

Referring to my deposition under No. 22 of the present interrogatory and to the affidavit of October 24th, 1910, of which I maintain the correctness in all points, I believe I have only to add that the exchange of cables between Mr. Ducrot, agent de la Compagnie Generale Transatlantique at Havre, and Mr. Hendren at New Orleans from the 25th of April, 1910, to 30th of April, 1910, was relating to 600 bales of cotton, concerning Paul Chardin, which he never has received, and which must not be confounded with the 1000 bales of cotton being subject to the present proceedings; so called "Texas" cause.

The cable of Mr. Ducrot dated 25th of April, 1910, has been forwarded on the demand of Paul Chardin desiring to receive some news about the 600 bales.

I have nothing else to add to the foregoing depositions, which I have made as clear as possible, wishing to explain the situation of Paul Chardin in these proceedings with the most possible correctness and to show his indisputable rights to the cotton in question.

(Signed) A. RISS.
(Signed) J. B. BEECHER,
[American Consulate Seal] Commissioner.

828 Cross-Examination of ALPHONSE RISS.

First cross-interrogatory:

State whether or not Paul Chardin is a banker, and whether it is a part of his business to accept for account of customers

drafts and bills of exchange and give the details of business methods employed in the premises.

To the first cross-interrogatory he saith:

Paul Chardin is a merchant, who is doing all kinds of business generally done by a commercial firm, but he is not a banker according to the understanding of this word. He does not accept drafts or bills of exchange for account of other firms or individuals, but he accepts only documentary drafts in execution of his proper dealings. He is, therefore, in this consideration his own banker, without, however, calling him a banker.

Second cross-interrogatory:

At what point were the drafts drawn by Steele, Miller & Company accepted; by and through whom was the accommodation arranged? Attach copies of all correspondence bearing upon this subject, and let the notary public examine the originals and certify to the correctness of the copies.

To the second cross-interrogatory he saith:

The drafts drawn by Steele, Miller & Co. on Paul Chardin have been accepted by him thro' his firm at Paris, as always done. There are no other arrangements existing, as the contracts closed between Paul Chardin and Steele, Miller & Co. represented thro' their agents at Havre MM. Scheuch & Co. The drafts and acceptances of same are the conditions stipulated under those contracts, closed between Paul Chardin and Steele, Miller & Co. for the reimbusement of the purchase price.

I annex to this deposition copies of the contracts as exhibits No. 54 to No. 58. There has been no other correspondence exchanged in this respect between Paul Chardin and Steele, Miller & Co. or Scheuch & Co.

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Third cross-interrogatory:

State whether or not you charged a commission for accepting these drafts, and give in detail a statement showing the charges made by you against said drafts as well as charges made by you against any and all drafts of the same character drawn by Steele, Miller & Company, and accepted by Paul Chardin from September 1, 1909, to the date of the last draft accepted.

To the third cross-interrogatory he saith:

Paul Chardin has charged for the acceptance of the said drafts of those 1000 bales a commission of 3/16%. He has charged the same commission for all acceptances of all documentary drafts drawn by Steele, Miller & Co. or other firms and also for those drawn since the 1st of September, 1909, until the 8th of April, 1910, when he accepted the last draft of Steele, Miller & Co., according to the statement I annex hereto under No. 59.

Fourth cross-interrogatory:

If you state that you charged a commission, state whether or not this commission charged by you was the same commission charged other customers of the banking house for the same character of business and whether or not it is the usual and customary charge among the French banks for business of this character.

To the fourth cross-interrogatory he saith:

The firm of Paul Charden, having never accepted documentary drafts but for its own account and against business dealings for its own account and not for account of any other commercial firms or individuals, as I explained already under No. 1 of this cross-interrogatory had therefore never to charge such a commission to other customers for the same character of business or others.

The commission of 3/16% or sometimes 1/4%,
830 according to the customs of the Havre trade, had been charged and received not only by the so-called banks or bankers (who are accepting documentary drafts in virtue of arrangements, having as subject credits for reimbursement,) but also by all Havre cotton merchants, who make it a rule to have drawn on themselves by the American shippers against cotton bought for their account from them.

Fifth cross-interrogatory:

Explain the meaning of "acceptance against reimbursement." In other words, when a bank accepts for account of a customer, does the bank at that time part with any money or is it not the lending of the bank's credit for the period between the presentation of the draft and the maturity of said draft, and does not the bank receive compensation for this act

and look to its customer to discharge the draft when same becomes due?

To the fifth cross-interrogatory he saith:

As I am not a banker or a banking firm, I regret that I cannot reply to this question. I have, however, to say that I don't remember that the expression of the "acceptation contre remboursement" has never been used in respect to the contracts which I made with Steele, Miller & Co. in buying cotton from them.

Sixth cross-interrogatory:

Is not acceptance against reimbursement a large part of the banking business in Europe, and is not most cotton and products of that chaarcter handled on this plan?

To the sixth cross-interrogatory he saith:

I repeat that I am not in the banking business and that the expression "Acceptation contre remboursement" is never used by my firm or myself.

Seventh cross-interrogatory:

When a bank accepts against reimbursement for account of the customer, does that bank at any time consider
831 that it has become a purchaser of the property, subject to its profits, if there should be an enhancement in the property, or subject to a loss if there should be a depreciation, or is not the contract, as stated before, simply the pledge of the bank's credit for account of a customer, the bank retaining possession of the documents, until such time as the customer has discharged the obligation, or until such time as it sees fit to deliver the documents to the customer?

To the seventh cross-interrogatory he saith:

I can only repeat that I am not competent at all regarding what may consider or what may not consider a banker under the circumstances indicated in this interrogatory, because I am managing only a commercial firm at Havre.

Eighth cross-interrogatory:

Are you acquainted with the banking methods of France?

To the eighth cross-interrogatory he saith:

I regret very much not being able to inform you about this, but I don't know enough of the banking methods in France to make a clear statement to the question.

Ninth cross-interrogatory:

Are you acquainted with the Societe Generale, the Bank of Mulhouse, Credit Havrais, Comptoir d'Escompte de Mulhouse?

To the ninth cross-interrogatory he saith:

I knew very well the Societe Generale, le Credit Havrais, la Banque de Mulhouse, le Comptoir d'Escompte de Mulhouse.

Tenth cross-interrogatory:

Are these parties speculators in cotton, sugar, rice or grain or any commodity?

To the tenth cross-interrogatory he saith:

As the named firms are banks they are not speculators in cotton, sugar, rice, grain or any other commodity. But of course I cannot know personally if it may happen to those banks to speculate occasionally.

832 Eleventh cross-interrogatory:

Do you know whether these banks or any of them have at any time been the purchasers of cotton, accepting the losses and making the profits as a result of said purchases?

To the eleventh cross-interrogatory he saith:

I don't know at all if these banks or any of same have ever bought cotton, accepting the losses and making the profits as a result of such a transaction.

Twelfth cross-interrogatory:

Do these banks buy and sell cotton futures for their own accounts?

To the twelfth cross-interrogatory he saith:

I don't know if those banks are buying or selling cotton futures for their own account.

Thirteenth cross-interrogatory:

If you answer yes, give the names of the American firms

from whom these banks have purchased cotton, or sugar, or grain, or any such commodities, and with whom such course of conduct was carried on.

To the thirteenth cross-interrogatory he saith:

I refer to my previous depositions and regret that I am unable to give the desired informations.

Fourteenth cross-interrogatory:

In the within numbered and entitled cause you filed an affidavit in which appears: "On April 20 it was reported in Liverpool that Knight, Yancey & Company were in difficulties and this report was known at Havre on April 21, 1910. There was no report or rumor then in respect to Steele, Miller & Company. On Saturday evening, April 23, Scheuch & Company received from Bremen a telegram, stating that a bank of that city refused to accept drafts of Steele, Miller & Company, and they communicated this to the bank in Havre, with the statement that the refusal of the Bremen house was as a matter of precaution, on account of the frauds of Knight, Yancey & Company, but without any knowledge that Steele,
833 Miller & Company had acted in the same manner. Scheuch & Company were asked to cable Steele, Miller & Company for information. Afterwards, on the evening of April 26th, a house at Havre received from New Orleans a cable announcing the failure of Steele, Miller & Company, but the next day that house received another cablegram from the same correspondent, telling it not to reveal telegram of the day before, because it had not been confirmed. Finally, on April 29th, Scheuch & Company received from Steele, Miller & Company advice by cable that they had suspended." Please state if this is correct.

To the fourteenth cross-interrogatory he saith:

The statement of the affidavit in question is perfectly correct.

Fifteenth cross-interrogatory:

Explain what you mean by the terms "arranged for the folowing purchases thereof from Steele, Miller & Company"?

To the fifteenth cross-interrogatory he saith:

When I stated "arranged for the following purchases thereof

from Steele, Miller & Co. I only wanted to say and I thought to have been very clear that we had contracted with Steele, Miller & Co. purchases of cotton to be delivered gradually according to the statement which I attach to this deposition as exhibit No. 60. These various purchase had been made verbally between myself and Mr. Linde in the presence of of Mr. Scheuch, but have been confirmd always immediately by writing thro MM. Scheuch & Co. for account of Steele, Miller & Co., as always done according to the custom.

Sixteenth cross-interrogatory:

If you answer that these dealings were verbal, give the name of the party with whom these dealings were had.

To the sixteenth cross-interrogatory he saith:

I beg to refer to my deposition under No. 15 by which I replied to this question.

Seventeenth cross-interrogatory:

State the relations of the party to Steele, Miller & Company.

To the seventeenth cross-interrogatory he saith:

I suppose that this question refers to MM. Scheuch & Co. This firm is very well known at Havre amongst the
834 cotton people and beyond the business they do as cotton commission merchants for their own account; they are also the agents of a great number of American cotton shippers, amongst which was the firm of Steele, Miller & Co. In their quality as agents of Steele, Miller & Co. they have confirmed to Paul Chardin those purchases he had made from the Corinth firm.

Eighteenth cross-interrogatory:

Give the place at which the conversation was held and give the time of said conversation. You are cautioned that we desire explicit information upon this subject and you will answer this question fully and without reservation.

To the eighteenth cross-interrogatory he saith:

It is quite impossible for me after two years time to remember exactly the place and the time when and where I contracted

the said purchases with Mr. Linde; I remember only that Mr. Linde came to me as well at the exchange as to our office proposing these dealings, therefore it is sure that this business has been contracted either at the exchange or in our office during the regular business hours from 9 to 12 noon and from 2 to 6 p. m.

Nineteenth cross-interrogatory:

If you answer that your transactions with Steele, Miller & Company were in writing, attach to your answer as an exhibit copies of each and every letter written by you to Steele, Miller & Company, and reply received by you from Steele, Miller & Company, together with every contract or writing bearing upon the subject.

To the nineteenth cross-interrogatory he saith:

I have annexed under No. 2 of the present cross-examination the letters which Scheuch & Co. as agents of Steele, Miller & Co. addressed to Paul Chardin as a confirmation of the transactions which Paul Chardin had made with Steele, Miller & Co. thro' Mr. Linde in presence of Mr. Scheuch.

Twentieth cross-interrogatory:

If you state that this arrangement was entered into with other parties for account of Steele, Miller & Company, give the name or names of the party or parties, giving
835 the day or dates on which this arrangement took place and attach to these interrogatories each and every letter written by you to said party or parties and reply received by you from said party or parties. You are cautioned that we desire explicit information upon this subject, and will answer this question fully and without reservation.

To the twentieth cross-interrogatory he saith:

As I have replied to this question already under No. 16 and 18 of this cross-examination I believe it unnecessary to repeat the same again and I beg to refer to the previous depositions.

Twenty-first cross-interrogatory:

If you state that you had an agreement with Steele, Miller & Company for the delivery of 200 bales of cotton, monthly

or 1200 bales of cotton monthly, state what kind of cotton was to be delivered and where the delivery was to be made.

To the twenty-first cross-interrogatory he saith:

As stated already under No. 15 of this cross-examination Paul Chardin had with Steele, Miller & Co. five different contracts, which were made all for monthly deliveries of a certain quantity of bales of cotton according to the statement I annexed already under No. 15. These deliveries had to be made all at Havre. The quality was, as stipulated in those contracts, for "good middling, good colour and staple 28/29MM."

Twenty-second cross-interrogatory:

State further whether you were to advance the cash and whether at the time you paid this draft you considered that you had made an advance to Steele, Miller & Company on account of the cotton which you claim you were to have received in monthly installments.

To the twenty-second cross-interrogatory he saith:

I refer to what I have already stated when I said that the acceptance by Paul Chardin of the documentary drafts drawn by Steele, Miller & Co. on him was the manner agreed to, how Paul Chardin was paying the purchase price of the cotton which he had bought from Steele, Miller & Co. Paul Chardin did not make any of so-called advances to Steele,
836 Miller & Co., but he only fulfilled his obligations as a buyer of the cotton in paying the purchase price of the cotton which Steele, Miller & Co. had to ship in the way to make the monthly deliveries as stipulated in the contracts.

Twenty-third cross-interrogatory:

If you state that you had a contract for the delivery of 200 bales of cotton monthly, or 1200 bales of cotton monthly (and your affidavit upon this subject is indefinite), state whether or not you received either 200 bales per month or 1200 bales per month for the following months, October, 1910; December, 1910; January, 1911; February, 1911; March, 1911.

Annex to your answer to these interrogatories all correspondence that passed upon the subject concerning these deliv-

eries, either between you and Steele, Miller & Company, or between you and Scheuch & Company.

To the twenty-third cross-interrogatory he saith:

I suppose that it is by a clerical error that this question reads, ".....October, 1910; December, 1910; January, 1911; February, 1911; March, 1911," Paul Chardin had bought from Steele, Miller & Co. as per the contracts of which I have made a statement under No. 15:

200 B. for delivery October, 1909.
1000 B. for delivery December, 1909.
1200 B. for delivery January, 1910.
1200 B. for delivery February, 1910.
1000 B. for delivery March, 1910.

There has not been any correspondence between Paul Chardin and Steele, Miller & Co. in respect to these deliveries and the correspondence which had taken place between Paul Chardin and Scheuch & Co. has been attached already, otherwise those deliveries were only subject to conversations either verbally or by telephone.

Twenty-fourth cross-interrogatory:

If you answer that you had a direct contract with Steele, Miller & Company for delivery of a certain number of bales monthly, state what arrangements you had concerning the right of Steele, Miller & Company to deliver to you any kind or character of cotton by delivering same to the carrier and forwarding you bill of lading attached to the draft.

Attach to your answer to these interrogatories all
837 correspondence or any writings of any character upon this subject, either with Steele, Miller & Company or any other party or parties.

To the twenty-fourth cross-interrogatory he saith:

As I have alreay declared, Paul Chardin had contracted a certain number of direct contracts with Steele, Miller & Co., having for purpose the delivery of a certain quantity of cotton of a specified quality, to be delivered to him monthly as indicated in those contracts. Paul Chardin, however, has never allowed that Steele, Miller & Co. might forward against those

drawings on him any kind or character of cotton. This is absolutely incorrect and Paul Chardin has never given such an authority, really absurd, for which he has never been asked neither by Steele, Miller & Co. nor by Scheuch & Co.

Twenty-fifth cross-interrogatory:

If you state that you had a contract with Steele, Miller & Company for the delivery of a certain number of bales of cotton monthly against which you accepted drafts, attach to these interrogatories a full statement showing the cotton delivered to you from September 1, 1909, under said contract, the drafts drawn against you to which bills of lading were attached, and a full statement of your settlement with Steele, Miller & Company under said drafts and contracts. In other words, did you accept each and every shipment as made to you by Steele, Miller & Company as being up to grade and in accordance with the contract, or did you reject any part of said shipments? Give the difference in weight, and give the difference in grade. Annex to these interrogatories the invoices accompanying the draft accepted by you, together with your statement showing the difference in the transactions.

To the twenty-fifth cross-interrogatory he saith:

I annex to this deposition as exhibits No. 61 to No. 77 the originals of the final invoices of all the cotton received against the monthly delivery contracts, from which all details and informations wanted can be seen. All the settlements between the drafts drawn by Steele, Miller & Co. on Paul Chardin and the deliveries received either directly from Steele,
838 Miller & Co. or the deliveries which Scheuch & Co. had made for their own account to Paul Chardin in order to oblige Paul Chardin, as the cotton shipped to him did not arrive in time to make the deliveries in time have been always made thro' Scheuch & Co. as usually done.

After all, Paul Chardin has accepted the delivery of the 1200 bales of cotton which had been shipped for the delivery of the month of January, 1910, by Steele, Miller & Co. against the said contracts and of which I only refused 6 bales, which were too low. As to the other shipments which Steele, Miller & Co. had made against the said contracts, I had never to refuse anything on account of unconformity. On account of the urgent needs for cotton, which Paul Chardin had, I asked

Scheuch & Co. personally if they could not oblige me in delivering to Paul Chardin some cotton from their stock instead of the cotton of Steele, Miller & Co., which were arriving only slowly, and as Scheuch & Co. accomplished this desire, it happened that on arrival of the cotton shipped by Steele, Miller & Co. to Paul Chardin it went definitely into the hands of MM. Scheuch & Co. personally, in exchange of the merchandise which they had advanced to Paul Chardin for their own account as merchants.

Twenty-sixth cross-interrogatory:

How many bales of cotton were delivered to you under this supposed contract by Steele, Miller & Company from September 1, 1909, to May 1, 1910, and where was said delivery made.

To the twenty-sixth cross-interrogatory he saith:

I have already replied to this question under No. 25. Steele, Miller & Co. have drawn under the monthly delivery contracts with Paul Chardin against the following quantities of cotton:

on October 4th, 1909, 1000 balles cipher "Time"
on October 11th, 1909, 1000 balles cipher "Billy"
on November 10th, 1909, 1200 balles cipher "Hyatt"
on December 20th, 1909, 1200 balles cipher "Rita"
on January 27th, 1910, 1000 balles cipher "Geof"
on March 24th, 1910, 600 balles cipher "Kaibe"

Of these 6000 bales they have drawn on Paul Chardin direct for 5300 B. and on the Comptoir d'Escompte de Mulhouse, Havre, for account of Paul Chardin at 3 d/sight for 700 B. of cipher "Hyatt," because it seems that Steele, Miller & Co. could not draw at that time on Paul Chardin, the exchange
839 buyers at New York being full with that name. Of these total 6000 bales only 4,400 bales have arrived at Havre, 1000 (994 b) "Geof" were arrested on board of "Texas" and are now subject to this suit, and 600 B. "Kaibe" are missing completely. While Paul Chardin pai [paid] for 6000 bales of cotton he received so far only from Steele, Miller & Co. 4,400 bales. The deliveries took always place at Havre, as the shipments were forwarded to Havre.

Twenty-seventh cross-interrogatory:

Was the cotton procured by you from the steamship com-

pany, and, if so, who represented you in the transaction, and did the cotton on delivery by the steamship company come into your possession at once?

Attach to these interrogatories copies of the drafts accepted by you drawn by Steele, Miller & Company from September 1, 1909, excluding the drafts involved in this suit, and let these copies show everything appearing either on the reverse or the original thereof, and accompany these copies with an extract from your books showing how this transaction was treated by you and all entries appearing in connection with these drafts.

To the twenty-seventh cross-interrogatory he saith:

All this cotton, which arrived at Havre, was received directly from the steamship companies either by Paul Chardin, concerning the 1200 bales for January delivery or in his place by Scheuch & Co. for the cotton, which they had personally advanced to Paul Chardin, as I have explained under No. 25 of this cross-interrogatory.

The cotton of course on arrival came into the possession of Paul Chardin or in his place to Scheuch & Co. immediately.

I annex to this interrogatory as exhibits No. 78 to No. 121 the drafts accepted by Paul Chardin drawn on him and on the Comptoir d'Escompte de Mulhouse for his account by Steele, Miller & Co. since the 1st of September, 1909, with the exception of the drafts concerning this lawsuit and which have been already attached under the deposition No. 13 of the direct interrogatory and the six drafts against the last 600 bales "Kaibe," which are annexed to our claim against the bankruptcy estate.

840 I annex further to this deposition a statement showing how these drafts were entered in our books, as exhibit No. 122, at the same time I give the number of bales imported in 1909-1910 amounting to 42,700 bales, and the total amount of drafts accepted and paid for amounting to Francs 15,294,148.39.

Twenty-eighth cross-interrogatory:

If you testify that you had dealings direct with Steele, Miller & Company state whether or not Steele, Miller & Company had absolute and complete authority from you to ship under your supposed monthly contract at any time that it suited the convenience of Steele, Miller & Company, and

whether or not Steele, Miller & Company had absolute and full authority to ship any kind, character or grade of cotton, and whether or not under said contract you considered yourself bound to accept any shipment made by Steele, Miller & Company for your account.

To the twenty-eighth cross-interrogatory he saith:

As I have already stated under No. 24 of this cross-examination, never Steele, Miller & Co. have received from Paul Chardin the authority to ship under said contracts of monthly deliveries at any time convenient to them or any kind or character or grade of cotton, just as they liked. This would have been ridiculous and not business-like. Therefore, I was in no way bound to accept any shipment made by Steele, Miller & Co., and in accepting the drafts drawn by them under those contracts I have been always under the impression that these drafts were made against cotton which Paul Chardin had to receive against the said delivery contracts. If Scheuch & Co. would not have been willing or able to advance to Paul Chardin, in order to oblige him, some of their spot cotton, then Paul Chardin would have been bound to await the arrival of the cotton shipped to him by Steele, Miller & Co.

It was also understood with Mr. Linde, as already stated under No. 7 of the direct interrogatory, that in case of some inferior outturn in quality or staple of the shipments of Steele, Miller & Co., I was not bound to accept an allowance by way of arbitration, but that I had the right to require that those bales had to be replaced. This proves that Paul
841 Chardin expected to receive the cotton shipped to him.

Twenty-ninth cross-interrogatory:

If you answer that you had an arrangement with Scheuch & Company, or anyone else, for account of Steele, Miller & Company, state whether or not the said Scheuch & Company, or anyone else, had full and absolute authority from you to accept any kind, character or grade of cotton, and whether or not under said contract you considered yourself bound to accept any shipment accepted by Scheuch & Company, or anyone else, for your account.

To the twenty-ninth cross-interrogatory he saith:

Paul Chardin had no arrangements whatever with Scheuch

& Co. or other persons for account of Steele, Miller & Co. Neither Scheuch & Co. nor any other persons had any authority from Paul Chardin to accept any quality or character of cotton. As I have now explained different times already, I had no obligation at all to accept, under said contracts, any shipments accepted by Scheuch & Co. or anyone lese [else] for account of Paul Chardin.

Thirtieth cross-interrogatory:

Did Steele, Miller & Company carry a stock of cotton in Havre and, if so, under whose control and dominion was this stock of cotton? Who managed it; who sold it; who paid the drafts, and who handled it generally.

To the thirtieth cross-interrogatory he saith:

I have not been aware if Steele, Miller & Co. had a stock of cotton at Havre, but I remember only that Scheuch & Co. as merchants and under their own name had cotton for sale with the various Havre spot brokers, and I have bought many times spot cotton from Scheuch & Co.

Thirty-first cross-interrogatory:

If you state that you had an arrangement with Steele, Miller & Company for the delivery of a certain number of bales of cotton per month, state whether it was 200 or 1200; or if you state that you had an arrangement through Scheuch & Company for account of Steele, Miller & Company, state whether or not this arrangement did not provide that you were to be reimbursed for your acceptances out of cotton in stock in Havre of grades and kinds satisfactory. Give a
842 full and complete answer to this question and annex to these interrogatories all correspondence bearing upon this subject, both of Steele, Miller & Company, Scheuch & Company or any other parties, or from Steele, Miller & Company, Scheuch & Company or any other parties. We caution you that we desire explicit information on the foregoing questions, and copies of all corespondence, and your answer must be full and complete without reservation.

It may be that you will state that certain documents are in the possession of Messrs. Denegre & Blair, and therefore you cannot furnish copies of them. Under those conditions, you will be relieved from furnishing copies, but you will specifically

state whether the said document or documents are in the possession of Messrs. Denegre & Blair.

Annex to your answer to these interrogatories copies of insurance certificates now in your possession covering the cotton in controversy in this suit.

To the thirty-first cross-interrogatory he saith:

In regard to the quantities of cotton which Steele, Miller & Co. had to deliver monthly to Paul Chardin I beg to refer to the statement, which is attached to these depositions.

I did not have any arrangement with Scheuch & Co. for account of Steele, Miller & Co., under which the acceptances of Paul Chardin had to be reimbursed by cotton of the stock at Havre of grades and kinds satisfactory. I maintain that the shipments made by Steele, Miller & Co. against the drafts on Paul Chardin ought to be of cotton in conformity with the cotton which Paul Chardin had bought, to be delivered against such contracts.

I have nothing to add to my depositions under No. 25 of this cross-examination in reference to the circumstances under which I received from Scheuch & Co. certain deliveries of cotton, before the shipments made to Paul Chardin by Steele, Miller & Co. had arrived at Havre and to replace them.

These deliveries were not subject to any correspondence between Scheuch & Co. and Paul Chardin, this being arranged verbally and by telephone. I therefore regret not being able to annex to this deposition anything. Besides, there
843 has never existed in this respect any arrangement, contract or understanding between Scheuch & Co. and Paul Chardin, but every time when I was in a hurry to get cotton which I expected from Steele, Miller & Co. I addressed myself verbally to Scheuch & Co., asking them if it would be possible and if they would kindly oblige me by delivering to Paul Chardin some similar cotton in exchange of the cotton which Steele, Miller & Co. had shipped and which was in course of shipment.

Thirty-second cross-interrogatory:

What relations did Scheuch & Company bear to your transactions with Steele, Miller & Company?

To the thirty-second cross-interrogatory he saith:

As I have already declared under No. 15 of the present

cross-interrogatory, it was in the presence of Mr. Scheuch that I treated this business with Mr. Linde, who was at the time at Havre, and Schuech & Co. have confirmed to Paul Chardin the sales for account of Steele, Miller & Co. It is therefore very clear that Scheuch & Co. have not had any other relations to these contracts as such of the agents of Steele, Miller & Co. On the other side the advancing of some spot cotton by Scheuch & Co., as clearly explained under 25 and 31 of this cross-interrogatory, has been made by them (Scheuch & Co.) under their own name as merchants and not at all as agents of Steele, Miller & Co.

Thirty-third cross-interrogatory:

If you made an arrangement direct with Steele, Miller & Company for the sale of the cotton direct, why were the bills of lading made to the order of Steele, Miller & Company, notify Scheuch & Company? Why were the invoices made in the name of Scheuch & Company? Why were the insurance receipts indorsed to Scheuch & Company? Explain fully the part played by Scheuch & Company in this transaction, and if you state that they were your agents, state fully whether they were your general agents; whether they handled all the cotton business of your firm. State if, when you purchased cotton, you had the bills of lading indorsed to Scheuch & Company; your invoices made in the name of Scheuch & Company; your insurance receipts made in the name of Scheuch & Company,
and require that the documents bear the inscription
844 "notify Scheuch & Company."

To the thirty-third cross-interrogatory he saith:

It is absolutely incorrect that Scheuch & Co. were ever under any circumstances the agents of Paul Chardin, neither as general, particular, occasional nor accidental agents. There cannot be the slightest shade of a discussion about this point.

If the bills of lading accompanying the drafts drawn on Paul Chardin and which were made out to the order of Steele, Miller & Co., mentioned "notify Scheuch & Co., this is only an old existing custom in the cotton trade since many, many years and which has no other reason to be, as to inform the consignees of the steamers at Havre or elsewhere of the name of the notified person, in order to invest, to whom the cotton may belong, in case that the owner of the cotton does not claim

the cotton within a reasonable time after arrival of the steamer. It is an old custom for most of the cotton dealings at Havre thro' the various agents of the American shippers, to stipulate in the bills of lading "notify:.....," followed by the name of the agent thro' whom the sale of that cotton has been effected.

The insurance certificates, which had been attached to the documentary drafts of Steele, Miller & Co., drawn on Paul Chardin, have not been indorsed to Scheuch & Co. They were only indorsed in blanc by Steele, Miller & Co., the same as the through bills of lading attached to the drafts.

As to the invoices they were made out sometimes under the name of Scheuch & Co., sometimes under the name of Paul Chardin, what I have already explained under No. 8 of the direct interrogatory, but this has no importance at all, because in the practice it happens very often that invoices are made out under the name of the agent by whom the cotton had been sold. Paul Chardin therefore had never to ask that the bills of lading should bear "notify Scheuch & Co.," as this was done quite naturally. Paul Chardn or myself have never cared, when we bought cotton from Steele, Miller & Co., or any other shippers, for asking, or knowing, or telling, in which name the invoices should be established. This was quite indifferent to us. Paul Chardin or myself have never in-
845 dorsed bills of lading to Scheuch & Co. or caused to issue insurance certificates under their name. Besides, never bills of lading attached to the drafts, which Steele, Miller & Co. had drawn on Paul Chardin, have been indorsed to Scheuch & Co. or insurance certificates made out in their name.

Thirty-fourth cross-interrogatory:

At the time of the failure of Knight, Yancey & Company had you accepted for account of Scheuch & Company, or any other party, drafts of Knight, Yancey & Company; and if you answer yes, annex to your deposition a statement of each draft, together with a statement of the bills of lading attached to these drafts, and state whether or not these obligations have been paid and by whom, or whether or not you now hold same.

To the thirty-fourth cross-interrogatory he saith:

At the time of the failure of Knight, Yancey & Co. we did

not have any drafts accepted by Paul Chardin and drawn by Knight, Yancey & Co. for account of Scheuch & Co. or any other party; besides, Paul Chardin has never accepted for account of Scheuch & Co. or other parties any drafts drawn by Knight, Yancey & Co. or any other American shippers.

Thirty-fifth cross-interrogatory:

Was your bank aware of the delay of the arrival of the cotton for which it had accepted drafts of Knight, Yancey & Company and Steele, Miller & Co.?

To the thirty-fifth cross-interrogatory he saith:

Certainly I have been aware that the cotton shipped against the said drafts of Steele, Miller & Co. did not arrive very quickly, but by our personal experience we knew since at least five years that f. i. cotton shipped by Knight, Yancey & Co. arrived always very slowly. Such delays happened also on cotton shipped from the interior by other shippers as Steele, Miller & Co. and Knight, Yancey & Co. Therefore, I did never have the slightest suspicion in the fact that the cotton of Steele, Miller & Co. arrived generally with a certain delay.

Thirty-sixth cross-interrogatory:

If you answer yes to the thirty-fifth interrogatory, state whether or not you made any complaint as to these delays to the steamship lines, and if you should answer yes,
846 state whether the complaints were made verbally or in writing, and if you answer the complaints were made verbally, state to whom made and in the presence of whom, and if you answer that the complainants were made in writing, annex to your deposition copies of the complaints, together with the replies you received, and submit the original to the authority taking these depositions that he may compare said documents with your original communications and certify the copies as being correct.

To the thirty-sixth cross-interrogatory he saith:

Paul Chardin has never addressed any complaints verbally or by writing about these delays to the steamship companies.

Thirty-seventh cross-interrogatory:

During the latter part of January or the early part of Feb-

ruary, 1910, did you not stop the line of credit extended to Scheuch & Company by way of acceptances. If you answer yes, state why you stopped said line of credit, and state whether or not you gave notice of this fact to Scheuch & Company. If you answer yes, state whether said notice was verbal or in writing. If verbal, give the date or dates when given, to whom and in the presence of whom. If you gave such notice in writing, attach to your depositions a copy of such notice or notices and submit the original to the authority taking these depositions to the end that he may compare same with these copies and verify them as being correct.

To the thirty-seventh cross-interrogatory he saith:

Paul Chardin has never given to Scheuch & Co. any credit by way of acceptances of drafts or other, therefore there was no reason to stop the credit which did not exist.

Thirty-eighth cross-interrogatory:

Under the direct interrogatory number twenty-one you have been asked to explain the circumstances of your receipt of the custody bills of lading. In answering this interrogatory, you will annex all correspondence that you may have had with Scheuch & Company, or anyone else, on the subject; you will state whether or not you made any inquiry of the Compagnie Generale Transatlantique as to how two sets of bills of lading for the same cotton could be in existence at the same time. If you state that you made inquiry of the Compagnie
847 Generale Transatlantique or any source other than Scheuch & Company, you will state whether this inquiry was verbal or in writing; if you answer verbal, state the date or dates when made, to whom the inquiry was addressed and in the presence of whom, and if you answer this inquiry was made in writing, you will attach to your depositions a copy of the communications written by you and received in reply and you will submit the originals to the authority taking these depositions, to the end that he may compare them with the copies and certify the copies as being correct.

To the thirty-eighth cross-interrogatory he saith:

I have annexed to my deposition under No. 16 of the direct interrogatory all the correspondence which has been existed between Scheuch & Co. and Steele, Miller & Co. concerning

the circumstances under which Paul Chardin received those custody bills of lading. There is no other letter are [or] writing about this subject as the two noted [notes] which accompanied those custody bills of lading. Paul Chardin has never received from anyone else any other correspondence and has not addressed to anyone any letters or writings on this subject.

Paul Chardin has never asked the Compagnie Generale Transatlantique or any agent or officer of same or any other steamship company, neither verbally nor by writing, how it was that two sets of bills of lading existed at the same time for the same cotton.

Thirty-ninth cross-interrogatory:

Attach to your depositions a statement of your acceptances against American cotton during the season of 1909 and 1910, that is, beginning from September 1, 1909, and ending August 31, 1910. What was the total amount of drafts accepted by you during the cotton season of 1909 and 1910 against American cotton?

To the thirty-ninth cross-interrogatory he saith:

The professional secret prevents me from giving the statement asked for, and which in my mind has nothing to do with this present case. I can only state that the firm of Paul Chardin is doing a very large amount of business every year. I refer to my deposition under No. 27 cross.

848 Fortieth cross-interrogatory:

Under the foregoing interrogatory you have been asked to state the amount of business done by you in accepting cotton bills of lading in the season of 1909 and 1910. You will state at this time whether or not in any of these transactions you permitted the substitution of custody bills of lading for through bills of lading. If you answer that you did, you will give the names of the firms by which this substitution was performed, the dates of the drafts, the amount of the drafts, the dates of the through bills of lading and the dates of the custody bills of lading. We charge you that we are not discussing captains or mates receipts, but are asking solely if in your experience with American cotton shippers other than Steele, Miller & Company, any case has ever arisen by which port bills of

lading and custody bills of lading were in existence for the same cotton and at the same time that the original bills of lading were in your possession. You will answer this question fully and, as stated before, you will give the names of any American cotton houses by, with and through whom any such transactions occurred.

To the fortieth cross-interrogatory he saith:

Paul Chardin has never received any other custody bills of lading as those for the 994 bales of cotton loaded on board of st. "Texas."

Forty-first cross-interrogatory:

You have previously been asked whether or not you had any dealings with Knight, Yancey & Company and whether or not you held in your possession any accepted drafts of Knight, Yancey & Company about the time of the failure of Knight, Yancey & Company. If you answer yes, state whether or not when the failure of Knight, Yancey & Company was announced you made any inquiry concerning the cotton presumably covered by your bills of lading, and if you answer that you did, attach to your deposition copies of the inquiries, together with the replies thereto.

To the forty-first cross-interrogatory he saith:

Paul Chardin has done business with Knight, Yancey & Co., buying cotton from them, against which purchases Knight, Yancey & Co. drew likewise and generally on Paul Chardin, Paris, at 60 days' sight. Through bills of lading, insurance certificates and invoices attached to those drafts,
849 which he accepted for his own account. As I have already declared under No. 34, there were no drafts open at the time of the failure of Knight, Yancey & Co. which we had accepted. But at the time of the failure of Knight, Yancey & Co. 1000 bales of cotton, which Paul Chardin had bought from them previously, and which arrived by steamer "Alexandrian" end of April, 1910, at Havre, were arrested here by the trustee of the firm of Knight, Yancey & Co. on arrival of the steamer, which was the reason of a lawsuit before the Court of Commerce at Havre between the trustee and Paul Chardin. A judgment given by the Havre Court of Commerce, a very competent court in France for commercial cases,

ordered the delivery of those 1000 bales of cotton to Paul Chardin, stating that he alone had a right on that cotton, because he had paid the price for it in accepting and paying the drafts drawn by Knight, Yancey & Co., and because he was the holder of the through bills of lading bearing the same marks as the cotton arrived, although those through bills of lading were recognized to be falsed or bogus.

Forty-second cross-interrogatory:

Did you or did you not know at the time of the failure of Knight, Yancey & Company that the said firm of Knight, Yancey & Company had carried on its business by forging bills of lading, and if you answer yes, state whether or not this was a matter of general knowledge at Havre at that time.

To the forty-second cross-interrogatory he saith:

At the time when Knight, Yancey & Co. failed we have heard, as everybody, of the rumors which were running and according to which this firm had used false through bill of lading, but of course without being able to control the correctness of those rumors.

Forty-third cross-interrogatory:

Did you have any conversation with C. H. G. Linde of Steele, Miller & Company between January and May, 1910, and if you say that you did, repeat this conversation.

To the forty-third cross-interrogatory he saith:

I have seen Hr. Linde when he was at Havre in January and March, 1910, meeting him occasionally at the Havre exchange or perhaps on the street. I believe that I spoke to him, but about matters without any importance, having no relation to the business dealings I had with his firm. It is impossible for me to remember today about which matters we have spoken.

850 Forty-fourth cross-interrogatory:

File as an exhibit to your deposition all correspondence, telegraphic or otherwise, that passed between your bank and Scheuch & Company, and between your bank and any American firm or individual, between Jany. and May, 1910, inclusive, with reference to the business of Steele, Miller & Company or Knight, Yancey & Company. Attach as an

exhibit all correspondence, telegraphic or otherwise, that passed between your bank and Scheuch and Company and the German-American National Bank of New Orleans, or A. Breton, its vice president, or the Whitney Central National Bank, or the Canal-Louisiana Bank and Trust Company, or the Hibernia Bank and Trust Company, or any other bank or banker, between April 18, 1910, and May 15, 1910.

To the forty-fourth cross-interrogatory he saith:

I herewith declare that neither Paul Chardin nor myself nor any officer of that firm has had any telegraphic or other correspondence with Scheuch & Co., or with any American firm or individual between January and May, 1910, inclusive, with reference to the business of Steele, Miller & Co., or Knight, Yancey & Co. Paul Chardin or myself or any other officer of that firm have not had any correspondence of any character with German-American National Bank of New Orleans or Mr. A. Breton, its vice president, or the Whitney Central National Bank or the Canal-Louisiana Bank and Trust Company or the Hibernia Bank and Trust Company or any other bank or banker between 18 of April and 15th of May, 1910.

Forty-fifth cross-interrogatory:

State whether or not you permitted Scheuch & Company to make a habit of swapping bills of lading in all transactions had between you, and state when for the first time you permitted the substitution of said bills of lading. When you have fixed the date of the first substitution of Scheuch & Company, state what you did with the supposed original through bills of lading. Did you return them to Scheuch & Company, and if so did you take a receipt or writing from Scheuch & Company, and if you answer yes, annex to your deposition a copy of any receipt or writing which you may have taken from Scheuch & Company.

To the forty-fifth cross-interrogatory he saith:

I beg to refer to my deposition under No. 40 of this cross-interrogatory. There cannot be any question of having authorized Scheuch & Co. to exchange bills of lading.

851 Forty-sixth cross-interrogatory:

What other firm besides Steele, Miller & Company

ever engaged in this business of exchanging bills of lading for the same cotton or for any other article? State specifically the name of any firm or individual except Steele, Miller & Company, which substituted bills of lading covering the same cotton without filing evidence of the fact that it was done by and with the consent of the transportation company.

To the forty-sixth cross-interrogatory he saith:

I don't know if other firms have ever exchanged bills of lading of cotton or other merchandises.

Forty-seventh cross-interrogatory:

State whether you permitted the swapping of bills of lading by Knight, Yancey & Company, and what official of your bank permitted it to be done?

To forty-seventh cross-interrogatory he saith:

I had never to authorize the exchange of bills of lading of cotton shipped against drafts drawn on Paul Chardin by Knight, Yancey & Co. for our account.

Forty-eighth cross-interrogatory:

State further what official of your bank permitted the substitution of bills of lading by Steele, Miller & Company. In answering this question, mention the exact transaction in which this proceeding took place.

To the forty-eighth cross-interrogatory he saith:

I beg to refer to my depositions under No. 40, 45 and 47.

Forty-ninth cross-interrogatory:

File as an exhibit to your deposition all correspondence, telegraphic or otherwise, which you had with the Compagnie Generale Transatlantique between January 1, 1910, and June 30, 1910, touching movements of cotton by Steele, Miller & Company and Knight, Yancey and Company. Submit the originals to the authority taking these depositions that he may compare them with the copies as being correct.

To the forty-ninth cross-interrogatory he saith:

I annex to this deposition the correspondence, which Paul

Chardin has had with the Compagnie Generale Transatlantique during the said period as exhibits No. 123 to No. 125, and which refers only to the 600 bales of cotton, which are missing. Paul Chardin has never had during the
852 said period any correspondence with the Compagnie Generale Transatlantique relating to cotton fo [of] Knight, Yancey & Company.

Fiftieth cross-interrogatory:

Give the date that you exchanged the bills of lading attached to the drafts accepted by you for the 1000 bales of cotton marked R I N O, R N A M, R T H F, R M B E, R T P N, R N O I, R M N I, R S O M, R D G B, R B X K, for the custody bills of lading; give the hour of the day, the name of the individual who delivered the bills of lading and a copy of the entry made on your books of this transaction. Permit the authority taking these depositions to examine the original books to the end that he may compare them with the copy and certify the copy as being correct. State whether or not you still hold both the through bills of lading and the custody bills of lading. If you answer that you do, state whether at the time of previous exchanges you surrendered the through bills of lading, and if you answer yes, explain why you considered it necessary to retain both original and through bills of lading at this particular time.

To the fiftieth cross-interrogatory he saith:

The custody bills of lading of the 994 bales of cotton in question have been delivered to Paul Chardin at the following dates:

On 3rd of May, 1910, RNOI, 100; RMBE, 100; RNAM, 100; RTHF, 100; RDGB, 100; RBXK, 100; RMUI, 100.

On 7th of May, 1910, RSOU, 96; RTPN, 98; RINO, 100.

It is really impossible to state exactly the hour when the said custody bills have been handed over to our office. They have been brought by some of the clerks of the firm of Scheuch & Company. Whom I have not seen personally I cannot give a copy of any books in thid [this] regard, because there has not been any entry. I repeat that Paul Chardin has still actually in his hands the through and custody bills of lading corresponding to these 1000 of cotton.

853 City of Havre,
Republic of France. ss.

I, J. P. Beecher, vice consul of the United States of America at Havre, France, do certify that Alphonse Riss, the witness, personally appeared before me on the 13 day of October, 1911, at 2 o'clock in the afternoon, at the Consulate of the United States at Havre, in the Republic of France, and, after being duly sworn, to testify the truth, the whole truth, and nothing but the truth, did depose to the matter contained in the foregoing deposition, and did, in my presence, subscribe the same and certify to the authenticity of the exhibits. I certify that I have subscribed my name to each half sheet thereof, and further certify that according to cable instructions sent to Messrs. Scheuch & Co. of Havre, France, on September 4, 1911, by J. P. Blair, attorneys, the attestation of each exhibit has, (in view of their great number), been waived.

Witness my hand and official seal, the day and year above written.

(Signed) JOHN PRESTON BEECHER,
Vice Consul of the United States
of America, at Havre, France.

Deposited in the postoffice at Havre, France, this 13 day of October, 1911.

(Signed) JOHN PRESTON BEECHER,
[Seal] Vice Consul of the United States
of America at Havre, France.

(Fourteen $2.50 American Consular Service fee stamps, each stamped across the face with red ink, 13 Oct., 1911.)

Consular fee..	$35
Services of Clerk for copying, verifying accounts, etc. . ..	35
Total	$70.00

854 EXHIBITS OFFERED WITH DEPOSITION OF ALPHONSE RISS.

Filed October 24, 1911.

United States District Court, Eastern District of Louisiana.

J. A. E. Pyle, Trustee,
vs. No. 14,242
Texas Transport & Terminal Company, et als.

At the execution of a commission for the examination of witnesses in a case depending in the District Court of the United States for the Eastern District of Louisiana, wherein J. A. E. Pyle is complainant, and the Texas Transport and Terminal Company et als. are defendants, these exhibits numbered 1 to 125 were produced and sworn to by Alphonse Riss and subscribed by him at the time of his examination.

(Signed) AL RISS.
(Signed) JOHN PRESTON BEECHER,
[Seal] Vice Consul of the United States and Commissioner.

855 EXHIBIT No. 1.

Paul Chardin.

1000 B. Cotton, Cipher "Geof," Steamer "Texas."

Marks	Nos. Quantities	Nos. and Amount Drafts		Name of Bank Presenting Drafts	Date of Presentation of Drafts	Date of Acceptance of Drafts	Date of Payment.
					1910	1910	1910
RENO	1/100	No. 2130	$7,215.00	Munroe & Co	February 11th	February 11th	April 12th, Bank of France.
RSOU	1/100	2136	7,245.80	do	do	do	April 12th, Bank of Impl. Ottoman
RDGB	1/100	2137	7,199.89	do	do	do	April 12th, Bank of France
RBXK	1/100	2138	7,370.32	do	do	do	April 12th, Bank of Impal. Ottoman
RTPN	1/100	2139	7,357.33	do	do	do	do
RTHE	1/100	2131	7,361.87	Marcuard, Mayer & Borel	Feburary 12th	February 12th	April 13th, Marcuard Mayer, Borel & Cie
RNAM	1/100	2132	7,200.05	do	do	do	do
RMBE	1/100	2133	7,246.50	Credit Lyonnais	do	do	April 13th, Credit Lyonnais.
RNOE	1/100	2134	7,153.41	do	do	do	do
RMUE	1/100	2135	7,346.48	do	do	do	do

14242.

855 1/2 Duplicate of Document.

Referring to draft
M & Co. No. 5360 $7370.32@60
days sight on Paul Chardin, Paris,
forwarded to.....Febry. 11th, 1910
These documents to be delivered against.....
MUNROE & CO.,
7th Scribe Street,
Paris.

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856 DRAFT DRAWN BY STEELE, MILLER AND COMPANY ON PAUL CHARDIN, OFFERED ON BEHALF OF SAID PAUL CHARDIN, AND FILED WITH EXHIBITS IN CONNECTION WITH DEPOSITION OF ALPHONSE RISS. MARKED EXHIBIT NO. 2.

United States District Court, Eastern District of Louisiana,
New Orleans Division.

J. A. E. Pyle, Trustee,
vs. No. 14,242
Texas Transport and Terminal Company, et als.

Note:
Photograph of draft,
Transmitted to the Honorable United States Circuit Court of Appeals for the Fifth Circuit, in accordance with the stipulation of counsel, copied at page 1335 of this Trancript.

857 B 5-09 20 M Form 198 Revised 11-07

D 10-10 50M. Rev. 11-07.

(Form Authorized 1904.)

ILLINOIS CENTRAL RAILROAD COMPANY.
In Connection with Other Carriers on the Route.

Export Bill of Contract
Lading No.....Lot No.....Numbers .....
Issued at Winona, Miss., this 24th day of January, 1910.
Date loaded.....1910.
Received at Winona, Miss. From Steele, Miller & Co.,
the following property in apparent good order, except as noted (contents and condition of contents of packages unknown), marked, numbered, consigned and destined as indicated below.
Consignee and
Destination....Shippers Order, Havre France.
Party to be Notified.....Scheuch & Co., Havre France.

Marks and Numbers. Articles.
Rino 1/100. One Hundred Bales Compressed Cotton.
Car Numbers.
Inland Freight Prepaid.
Ocean Freight 28c Collect.
Shippers Weight 50213#
(Subject to Correction.)
(*U. S. Law requires Agent issuing Bill of Lading or write either "shipper's" or "carriers" before "weight."

To be carried to the Port (A) of New Orleans, La., and thence by s/s French Line, to the Port (B) Havre, France, (or so near thereto as steamer may safely get, with liberty to call at any port or ports in or out of the customary route), and to be there delivered in like good order and condition as above consigned; or to consignee's assigns, or to another carrier on the route to destination if consigned beyond said port (B), upon payment immediately on discharge of the property, of the freight thereon, at the rate from New Orleans, La., to Havre, France, of twenty-eight (28) cents, all inland charges prepaid. United States gold currency, per one hundred pounds gross

weight, and advanced charges.....($....), with all other charges and average, without any allowance of credit or discount; settlement to be made on the basis of 4 shillings 2 pence, 4.25 marks, 5.25 francs, 2.50 Dutch guilders, 3.80 kroner to the dollar, United States gold currency; if in other currency than herein provided for settlement to be made at the rate of $4.80 to the pound sterling, at the current rate of exchange officially quoted on the day the ocean steamer enters the Custom House at its port of discharge, for which banker's short-sight bills on London can be bought; when ocean freight is prepaid, $4.86 United States gold is equivalent to one pound sterling.

In consideration of the rate of freight herein named, it is hereby stipulated that the service to be performed hereunder shall be subject to the conditions, whether printed or written, herein contained, and said conditions are hereby agreed to by the shipper and by him accepted for himself and his assigns as just and reasonable.

Conditions.

Any Alteration, Addition or Erasure in This Bill of Lading Which Shall be Made Without the Special Notation Hereon of the Agent of the Carrier Issuing This Bill of Lading Shall be Void.

I.—With respect to the service until delivery at the port (A) first above mentioned it is agreed that:—

1. No carrier or party in possession of all or any of the property herein described, shall be liable for any loss thereof or damage thereto, by causes beyond its control; or by floods or by fire; or by quarantine; or by riots, strikes or stoppage of labor; or by leakage, breakage, chafing, loss in weight, changes in weather, heat, frost, wet or decay; or from any cause if it be necessary or is usual to carry such property upon open cars.

2. No carrier is bound to carry said property by any particular train or vessel, or in time for any particular market, or otherwise than with as reasonable despatch as its general business will permit. Every carrier shall have the right in case of

necessity to forward said property by any railroad or route between the point of shipment and the point to which the rate is given.

3. No carrier shall be liable for loss or damage not occurring on its own road or its portion of the through route, nor after said property is ready for delivery to the next carrier or consignee. The amount of any loss or damage for which any carrier becomes liable shall be computed at the value of the property at the place and time of shipment under this bill of lading, unless a lower value has been agreed upon or is determined by the classification upon which the rate is based, in either of which events such lower value shall be the maximum price to govern such computation. Claims for loss or damage must be made in writing to the agent at point of delivery promptly after arrival of the property, and if delayed for more than thirty days after delivery of the property, or after due time for the delivery thereof, no carrier hereunder shall be liable in any event,

4. All property shall be subject to necessary cooperage and baling at owner's cost. Each carrier over whose route cotton is to be carried hereunder, shall have the privilege, at its own cost, of compressing the same for greater convenience in handling and forwarding, and shall not be held responsible for deviation or unavoidable delays in procuring such compression; nor for loss or damage to cotton by fire or other casualty, in or at any cotton press, or during transportation to or from press, or while in transit; or while in depots, or places of reception. No carrier shall be liable for differences in weights or for shrinkage of any grain or seed carried in bulk.

5. Property not removed by the person or party entitled to receive it within twenty-four hours after its arrival at destination (Port A) may be kept in the car, depot or place of delivery of the carrier, at the sole risk of the owner of said property, and there held subject to lien for all freight and other charges. Property taken from a station at which there is no regularly appointed agent, shall be entirely at risk of owner until loaded into cars; and when received from private or other sidings, shall be at owner's risk until the cars are attached to trains.

6. No carrier hereunder will carry or be liable in any way for any documents, specie or for any article of extraordinary value not specifically rated in the published classifications, unless a special agreement to do so, and a stipulated value of the articles are indorsed hereon.

7. Every party, whether principal or agent, shipping inflammable, explosive, or dangerous goods, without previous full written disclosure to the carrier of their nature, shall be liable for all loss or damage caused thereby, and such goods may be warehoused at owner's risks and expense or destroyed without compensation.

8. If upon inspection it is ascertained that the articles shipped are not those described in this bill of lading, the freight charges must be paid upon the articles actually shipped, and at the rates and under the rules provided for by published classifications.

9. If all or any part of said property is carried by water over any part of said route such water carriage shall be performed subject to the further conditions, that no carrier or party shall be liable for any loss or damage resulting from the perils of the lakes, sea or other waters; or from explosion, bursting of boilers, breakage of shafts, or any latent defect in hull, machinery or appurtenances; or from collision, stranding, or other accidents of navigation; or from the prolongation of the voyage. And any vessel carrying any or all of the property herein described shall have liberty to call at intermediate ports; to tow and be towed, and to assist vessels in distress, and to deviate for the purpose of saving life or property.

10. No carrier shall be liable for delays, nor in any other respect than as warehousemen, while the said property awaits further conveyance, and in case the whole or any part of the property specified herein be prevented by any cause from going from said port in the first steamer, of the ocean line above stated, leaving after the arrival of such property at said port, the carrier hereunder then in possession is at liberty to forward said property by succeeding steamer of said line, or, if deemed necessary, by any other steamer.

11. This contract is executed and accomplished, and all liability hereunder terminates, on the delivery of the said property to the steamer, her master, agent or servants, or to the steamship company, or on the steamer pier at the said port, and the inland freight charges shall be a first lien, due and payable by the steamship company.

Attention of shippers is called to the Act of Congress of March 3, 1851, which provides that any person or persons shipping oil of vitriol, unslacked lime, inflammable matches, or gunpowder, in a ship or vessel taking cargo for divers persons on freight, without delivering at the time of shipment a note in writing, expressing the nature and character of such merchandise to the master, mate, or officer or person in charge of the loading of the ship or vessel, shall forfeit to the United States one thousand dollars.

II.—With respect to the service after delivery at the port (A) first above mentioned, and until delivery at the port (B) second above mentioned, it is agreed that:—

1. The steamer shall have liberty to sail with or without pilots; that the carrier shall have liberty to convey goods in craft and or lighters to and from the steamer at the risk of the owners of the goods; and, in case the steamer shall put into a port of refuge, or be prevented from any cause from proceeding in the ordinary course of her voyage, to tranship the goods to their destination by any other steamer; that the carrier shall not be liable for loss or damage occasioned by fire from any cause or wheresoever occurring by barratry of the master or crew; by enemies, pirates or robbers; by arrest or restraint of princes, rulers or people, riots, strikes, or stoppage of labor; by explosion, bursting of boilers, breakage of shafts, or any latent defect in hull, machinery or appurtenances, or unseaworthiness of the steamer, whether existing at time of shipment, or at the beginning of the voyage, provided the owners have exercised due diligence to make the steamer seaworthy; by heating, frost, decay, putrefaction, rust, sweat, change of character, drainage, leakage, breakage, vermin, or by explosion of any of the goods, whether shipped with or without disclosure of their nature, or any loss or damage arising from the nature of the goods or the insufficiency of

packages; nor for inland damages; nor for the obliteration, errors, insufficiency or absence of marks, numbers, address or description; nor for risk of craft, hulk or transhipment; nor for any loss or damage caused by the prolongation of the voyage, and that the carrier shall not be concluded as to correctness of statements herein of quality, quantity, gauge, contents, weight and value.

General average payable according to York-Antwerp Rules. If the owner of the steamer shall have exercised due diligence to make said steamer in all respects seaworthy and properly manned, equipped and supplied, it is hereby agreed that in case of danger, damage or disaster resulting from fault or negligence of the pilot, master or crew in the navigation or management of the steamer, or from latent or other defects, or unseaworthiness of the steamer, whether existing at time of shipment, or at the beginning of the voyage, but not discovered by due diligence, the consignees or owners of the cargo shall not be exempted from liability for contributions in general average, or for any special charges incurred, but, with shipowner, shall contribute in general average, and shall pay such special charges, as if such danger, damage or disaster had not resulted from such fault, negligence, latent or other defacts or unseaworthiness.

2. That this shipment until delivery at the port (B) second above mentioned is subject to all the terms and provisions of, and all the exemptions from liability contained in, the Act of Congress of the United States, approved on the 13th day of February, 1893, and entitled "An act relating to the navigation of vessels, etc."

3. That the value of each package receipted for as above does not exceed the sum of one hundred dollars unless otherwise stated herein, on which basis the rate of freight is adjusted.

4. That the carrier shall not be liable for articles specified in Section 4281 of the Revised Statutes of the United States, unless written notice of the true character and value thereof is given at the time of lading and entered in the bill of lading.

5. That shippers shall be liable for any loss or damage to

steamer or cargo, caused by inflammable, explosive or dangerous goods, shipped without full disclosure of their nature, whether such shipper be principal or agent; and such goods may be thrown overboard or destroyed at any time without compensation.

6. That the carrier shall have a lien on the goods for all freights, primages and charges, and also for all fines or damages which the steamer or cargo may incur or suffer by reason of the illegal, incorrect or insufficient marking, numbering or addressing of packages or description of their contents.

7. That in case the steamer shall be prevented from reaching her destination by quarantine, the carrier may discharge the goods into any depot or lazaretto, and such discharge shall be deemed a final delivery under this contract, and all the expenses thereby incurred on the goods shall be a lien thereon.

8. That the steamer may commence discharging immediately on arrival and discharge continuously, any custom of the port to the contrary notwithstanding, the Collector of the port being hereby authorized to grant a general order for discharge immediately on arrival, and if the goods be not taken from the steamer by the consignee directly they come to hand in discharging the steamer, the master or steamer's agent to be at liberty to enter and land the goods, or put them into craft or store at the owner's risk and expense, when the goods shall be deemed delivered and steamer's responsibility ended, but the steamer and carrier to have a lien on such goods until the payment of all costs and charges so incurred.

9. That if on a sale of the goods at destination for freight and charges, the proceeds fail to cover said freight and charges, the carrier shall be entitled to recover the difference from the shipper.

10. That full freight is payable on damaged or unsound goods; but no freight is due on any increase in bulk or weight caused by the absorption of water during the voyage.

11. That in the event of claims for short delivery when the steamer reaches her destination, the price shall be the

market price at the port of destination on the day of the steamer's entry at the Custom House, less all charges saved, steamer being only responsible for such part of the goods as have been actually delivered to the steamer at the port (A) first above mentioned, and steamer not liable for any loss or damage that may have occurred before such delivery, while agreeing to promptly present to inland carriers for account of owners of goods any claims for shortage or loss or damage that may have occurred before delivery of goods at the port (A) first above mentioned.

12. That merchandise on wharf awaiting shipment or delivery be at shipper's risk of loss or damage not happening through the fault or negligence of the owner, master, agent or manager of the steamer, any custom of the port to the contrary notwithstanding.

13. That this bill of lading, duly indorsed, be given up to the steamer's consignee in exchange for delivery order.

14. That freight prepaid will not be returned, goods lost or not lost.

15. That parcels for different consignees collected or made up in single packages addressed to one consignee, pay full freight on each parcel.

16. That freight payable on weight is to be paid on gross weight landed from ocean steamer, unless otherwise agreed to or herein otherwise provided, or unless the carrier elects to take the freight on the bill of lading weight, but inland freight and charges paid on wheat, peas, maize, or other grain, or seed, or other bulk articles, from point of shipment to seaboard, shall be paid by consignee at destination on the weight delivered on board ocean steamer.

17. It is stipulated that in case the whole or any part of the articles specified herein be prevented by any cause from going in the first steamer leaving after the arrival of such articles at said port, the carrier is only bound to forward them by succeeding steamers employed in the steamship line, or

if deemed necessary by said carrier, it may forward them in other steamers.

18. That the property covered by this bill of lading is subject to all conditions expressed in the regular forms of bills of lading in use by the steamship company at time of shipment, and to all local rules and regulations at port of destination not expressly provided for by the clauses herein.

19. That if the goods are destined beyond the port (B) second above mentioned, the transhipment to connecting carrier shall be at the risk of the owner of the goods, but at steamer's expense, and that all liability of the steamship company hereunder terminates on due delivery to connecting carrier.

III.—With respect to the service after delivery at the port (B) second above mentioned, and until delivery at ultimate destination if destined beyond that port, it is agreed that:—

1. In case the regular steamship service to final port of delivery should for any reason be suspended or interrupted, the carrier, at the option of the owner or consignee of the goods, or the holder of the bill of lading, may forward the goods to the nearest available port, this to be considered a final delivery; or to store them at the port (B) second above mentioned at the risk and expense of the goods until regular service to final port of destination is opened again.

2. That the property shall be subject exclusively to all the conditions of the carrier or carriers completing the transit; the duty of notification above provided for shall fall exclusively within the obligation of the carrier completing the transit, and no prior carrier shall be responsible for the fulfillment of that obligation.

And finally, in accepting this bill of lading, the shipper, owner and consignee of the goods, and the holder of the bill of lading, agree to be bound by all of its stipulations' exceptions and conditions, whether written or printed, as fully as if they were all signed by such shipper, owner, consignee or holder.

In witness whereof, the agent signing on behalf of the said Illinois Central Railroad Company, and of the said Ocean Steamship Company, or ocean steamer and her owner, severally and not jointly, hath affirmed 2 Bills of Lading, all of this tenor and date, one of which bills being accomplished, the other to stand void.

(Signed) B. A. TALBERT, Agent.
On behalf of carriers severally, but not jointly.

858 On back of bill of lading: Passe' a l'ordre de Paul Chardin. (Signed) Steele, Miller & Co. Consulate of the United States of America, at Havre France. I certify that I have compared the present document with the original and find it identical. Witness my hand & official seal this 27th day of May, 1910. (Signed) John Preston Beecher, Vice Consul of the United States of America at Havre, France. American Consular Service, $2 Fee Stamp. (Cancelled 27 Mai 1910.)

[Seal]

Exhibit No. 3.

859 Certificate of Insurance on Cotton.

By the President and Directors of the

Insurance Company of North America, Philadelphia.

Frs. 43,000 No. 382181

(Place and Date Corinth, Miss., January 27, 1910.

This is to certify, that on 24th January, 1910, this company insured, under policy made for Steele, Miller & Company, forty-three thousand francs on one hundred bales of cotton, valued at sum insured, per Illinois Central R. R., at and from Winona, Miss., to New Orleans, La., thence per s/s of French Line &/ or other line to Havre, France.

It is hereby understood and agreed that, in case of loss, such loss is payable to the order of Steele, Miller & Company, on surrender of this certificate, which represents and takes the place of the policy, and conveys all the rights of the original policy-holder, (for the purpose of collecting any claims for

loss or damage), as fully as if the property were covered by a special policy direct to the holder hereof, and is free from any liability for unpaid premiums.

BENJAMIN RUSH,
Second Vice-President.

Not valid unless countersigned by Steele, Miller & Co.
Countersigned: (Signed) Steele, Miller & Co.

[Indorsed in red ink:] Duplicate (original unpaid).

860 It is especially agreed, that all claims for loss or damage under this certificate shall be submitted for approval to one of the following representatives to whom immediate notice of any casualty must be given:

Mr. Walter Blaess,
Antwerp, Belgium.
Messrs. F. Reck & Co.
Bremen, Germany.
Messrs. Runciman & Co.,
Buenos Aires, Argentina.
Messrs. Gladston, Wyllie & Co.,
Calcutta, India.
Mr. Ettore Cavallo,
Genoa, Italy.
Mr. Julius Hess,
Hamburg, Germany.
Mr. E. Rose,
Havre, France.
Mr. John Duncan Thompson,
Kobe, Japan.
Messrs. Felipe J. Alvarado & Co.
Limon, Costa Rica.
Messrs. Wendt & Co.,
London, England.
Messrs. Henry Forster & Co.,
Maceio and Pernambuco, Brazil.
Wilson & Co.,
Madras, India.
Marine Underwriters Association
of Victoria, Limited.
Melbourne, Australia.

Mr. Arthur Price,
Merida, Mexico.
Mr. E. O. Crocker,
Montevideo, Uruguay.
Messrs. Mackie, Dunn & Co.
Port Elizabeth, South Africa.
Mr. W. C. Peck,
Rio de Janeiro, Brazil.
Mr. William LeLacheur Lyon,
San Jose, Costa Rica.
Mr. C. E. Demarest,
Santos, Brazil.
The Yang-tsze Insurance Association, Limited,
Shanghai, China.
Messrs. R. W. Cameron & Co.,
Sydney, New South Wales.
The Sydney Marine Underwriters and Salvage Association, Limited.
Sydney, New South Wales.
Messrs. R. W. Cameron & Co.
Auckland, N. Z., for all New Zealand.
Mr. John William Cain,
Yokohama, Japan.

Adjusted claims will be paid in sterling, at the rate of four dollars and ninety-five cents ($4.95) to the pound, or in its equivalent by

Messrs. Von der Becke & Marsily,
Antwerp, Belgium.
Messrs. Hope & Co.,
Amsterdam, Holland.
Messrs. Shewan, Tomes & Co.,
Canton and Hong Kong, China.
Mr. F. W. Burchard,
Hamburg, Germany.
Messrs. Brown, Shipley & Co.,
London, England.
Messrs. Morgan, Harjes & Co.,
Paris, France.
The Local Agencies of the London and Brazilian Bank, Limited, in South America.

Claims are to be adjusted according to the usage at Lloyds, but subject to the conditions of the policy.

Messrs. Wendt & Co., London, England, are the attorneys of the company, on whom service of process can be made.

Notice. To conform with the revenue laws of Great Britain in order to collect a claim under this certificate, it must be stamped within ten day after its receipt in the United Kingdom.

861 This Certificate Shall Not Be Valid if Issued After August 31, 1910.

Marks and Numbers.

R I N O

1/100

This insurance covers also country damage and the risk after discharge at port of destination until warehoused, or if not warehoused until delivery at the destination in the interior.

Incorporated, A. D. 1794.

Clauses.

Also to pay average on each bale as if separately insured if amounting to (3%) three per cent. and on shipments to the United Kingdom and /or Continent to pay sea damage and country damage on cotton of current season's crop without reference to series or amount.

On linters, to pay average only if the vessel be stranded, sunk, burnt or in collision.

To pay general average and charges as per foreign statement or per York/Antwerp Rules if so claimed.

Including risk of crafts &c., to and from the vessel, each craft or lighter being deemed a separate insurance.

Held covered in case of deviation or change of voyage, or transfer to other steamers, at a premium to be arranged, provided notice be given on receipt of advices.

This certificate is issued subject to the terms and conditions of the policy, except so far as herein otherwise provided.

B/L No.

(On back of certificate): Passe' a l'ordre de Paul Chardin. (Signed) Steele, Miller & Co.

Exhibit No. 4.

862 Number 2130.

Invoice of 1 0 0 Bales Cotton Shipped by
Steele, Miller & Co., via I C R R to New Orleans, La.
And steamer French Line to Havre, France,
For account of Schenck & Co., Havre.
Consigned to order
Cipher Geof

R-i-n-o 100 B-C
Bales weighing 50,213 lbs.

Less 6%	3,013 lbs.		
	47,200 lbs. at 7.81d	368,632d	
Less freight on 50,214 lbs. at 28c		7,030d	
		361,602d	
		At 25.20 Fcs	37,968.20
			379.70
			37,588.50
			70.50
			37,518.00

By Draft No. 2130 at 60 DS
Against Paul Chardin,
Paris, France.
Insurance Fcs. 43,000 with Insurance Co. of North America,
Corinth, Miss., U. S. A. Jan. 27, 1910.
Date of Order Jan. 27, 1910. No. E-129, from Winona, Miss.
E & O E
Exhibit No. 5.

863 Exhibits numbered 6 to 41, inclusive, being drafts, through bills of lading, insurance certificates, and invoices, omitted per instructions.

* * * * * * * *

925 Scheuch & Co.
Havre Je/K

Havre, May 3rd, 1910.

Mr. Paul Chardin,
E/V.

Sir:

Enclosed we have the pleasure to remit custody bill of lading for:

R.N.O.I	100 B
R.M.B.E.	100 "
R.N.A.M.	100 "
R.T.A.F.	100 "
R.D.G.B.	100 "
R.B.X.K.	100 "
R.M.U.I.	100 "

by the S/s Texas. for which you will kindly acknowledge receipt.

Accept sire our sincere salutations.

p.pro. SCHEUCH & CO.
GEO. FREBOURG.

14242. Exhibit No. 42.

926 Scheuch & Co.
Havre. Je/K.

Havre, Aug. 7th, 1910.

Mr. Paul Chardin,
E/V.

Sir:

Enclosed we have the pleasure to remit custody bill of lading for

R.S.O.U	96 B
R.T.P.N	98 "
R.I.N.O.	100 "

by the steamer Texas. Kindly acknowledge receipt of same.

Accept gentlemen our sincere salutations.

p.pro. SCHEUCH & CO.
GEO. FREBOURG.

14242. Exhibit No. 43.

927 COMPAGNIE GENERALE TRANSATLANTIQUE.

French Line.

Fast Freight Service, From New Orleans to Havre.

Paris, Main Office, 6 Rue Auber.
Havre, General Agency, Boulevard de Strausbourg.
General Agency for United States and Canada, 19 State Street.
Agency at New Orleans.
The Texas Transport & Terminal Co., Inc.,
W. H. Hendren, Local Manager, New Orleans, La.

RINO
1/100
Branded Steele.
Notify:
Scheuch & Co.,
Havre, France.

Freight on $.....
Charges $.....
Total, $.....

No inflammable or dangerous article, such as medical fluids, ether, chloroform, oil, alcohol, gun-powder, percussion caps, vitriol, tar, turpentine, acids, matches, etc., shall be received on board the steamers of this company, without a previous authorization from the board of directors. Any person who by means of misrepresentation having shipped any of the aforesaid articles will be liable to a penalty of 2,000 francs to this company, besides the responsibility for damage arising from misrepresentation and the penalties inflicted by the laws of France on the 18th of June, 1870.

Attention of shippers is called to the Act of Congress of 1851, which provides that any person or persons shipping oil of vitriol, unslacked lime, inflammable matches, or gunpowder, in a ship or vessel taking cargo for divers person on freight, without delivering at the time of shipment, a note in writing, expressing the nature and character of such merchandise to

the master, mate or officer or person in charge of the loading of the ship or vessel, shall forfeit to the United States one thousand dollars.

Palfrey-Rodd-Purcell Co. Ltd. N. O.—10 M. 47567
Form 308 Jan. 5, 1912.

Engagement No..... Bill of lading No.....
Received, in apparent good order.

and condition, by The Compagnie Generale Transatlantique, from Steele, Miller & Co., to be transported by the steamship Texas, from the Port of New Orleans to Havre (or so near thereto as she may safely get) with liberty to call at any port or ports in or out of the customary route, in any order, to receive or discharge coal, cargo, passengers, or for any other purpose, or failing shipment by said steamer, in and upon a following steamer: One Hundred (100) Bales Compressed Cotton, 50213# under deck, being marked and numbered as per margin, shipper's weight, (quality, quantity, gauge, contents, weight and value unknown), and to be delivered in like good order and condition at the Port of Havre, unto shipper's order, or to his or their assigns, he or they paying freight and charges immediately on discharge of the goods, without any allowance of credit or discount, at the rate of twenty-six (26) cents per 100# on the gross intaken weight or measurement as per margin, or as may otherwise result on verification of same at port of destination. Cost of weighing at the expense of the merchandise.

Freight, when payable at destination, to be paid at the rate of Francs 5.25 per dollar or francs 25.25 per £ sterling, as the case may be.

It is mutually agreed, that the steamer shall have liberty to sail with or without pilots; that the carrier shall have liberty to convey goods in craft and / or lighters to and from the steamer at the risk of the owners of the goods; and in case the steamer shall put into a port of refuge, or be prevented from any cause from proceeding in the ordinary course of her voyage, to tranship the goods to their destination by any other steamer; that the carrier shall not be liable for loss or damage occasioned by perils, of the sea or other waters, by fire from any cause or wheresoever occuring; by barratry of the master or crew; by enemies, pirates or robbers; by arrest

or restraint of princes, rulers or people, riots, strikes, or stoppage of labor; by explosion, bursting of boilers, breakage of shafts, or any latent defect in hull machinery or appurtenances, or unseaworthiness of the steamer, whether existing at time of shipment, or at the beginning of the voyage, provided the owners have exercised due diligence to make the steamer seaworthy; by heating, frost, decay, putrefaction, rust, sweat, change of character, drainage, leakage, breakage, vermin, or by explosion of any of the goods, whether shipped with or without disclosure of their nature or any loss or damage arising from the nature of the goods or the insufficiency of packages; nor for inland damage; nor for the obliteration, errors, insufficiency or absence of marks, number, address or description; nor for risk of craft, hulk or transshipment; nor for any loss or damage caused by the prolongation of the voyage, and that the carrier shall not be concluded as to correctness of statements herein of quality, quantity, gauge, contents, weight and value. General average payable according to York-Antwerp Rules. If the owner of the steamer shall have exercised due diligence to make said steamer in all respects seaworthy and properly manned, equipped and supplied, it is hereby agreed that in case of danger, damage or disaster resulting from fault or negligence of the pilot, master or crew in the navigation or management of the steamer, or from latent or other defects, or unseaworthiness of the steamer, whether existing at time of shipment, or at the beginning of the voyage, but not discoverable by due diligence, the consignees or owners of the cargo shall not be exempted from liability for contribution in general average, or for any special charges incurred, but with the shipowner, shall contribute in general average, and shall pay such special charges, as if such danger, damage or disaster had not resulted from such fault, negligence, latent or other defects or unseaworthiness.

It is also mutually agreed that this shipment is subject to all the terms and provisions of and all the exemptions from liability contained in the Act of Congress of the United States, approved on the 13th day of February, 1893, and entitled, "An act relating to the navigation of vessels, etc."

1. It is also mutually agreed that the value of each package receipted for as above does not eceed [exceed] the sum

of one hundred dollars unless otherwise stated herein, on which basis the rate of freight is adjusted.

2. Also, that the carrier shall not be liable for articles specified in Section 4281 of the Revised Statutes of the United States unless written notice of the true character and value thereof is given at the time of lading and entered in the bill of lading.

3. Also, that shippers shall be liable for any loss or damage to steamer or cargo, caused by inflammable, explosive or dangerous goods, shipped without full disclosure of their nature, whether such shipper be principal or agent; and such goods may be thrown overboard or destroyed at any time without compensation.

4. Also, that the carrier shall have a lien on the goods for all freights, primages and charges, and also for all fines or damages which the steamer or cargo may incur or suffer by reason of the illegal, incorrect or insufficient marking, numbering, or addressing of packages or description of their contents.

5. Also, that in case the steamer shall be prevented from reaching her destination by quarantine, the carrier may discharge the goods into any depot or lazeretto, and such discharge shall be deemed a final delivery under this contract, and all the expenses thereby incurred on the goods shall be a lien thereon.

6. Also, that goods exceeding two tons in weight or measurement shall be liable to pay extra charges, if any, for loading, handling, transshipping or discharging. Also, that the steamer or any of the servants of the company shall not be liable for any damage or loss occurring from any accident in loading, handling, discharging or transshipping of packages exceeding two tons in weight. And in case of any damage or loss resulting to the steamer, cargo, lighters, cranes, or hoisting tackle, owing to incorrect weight having been declared, the shippers and / or consignees of such cargo shall be responsible for such loss or damage.

7. Also, that the steamer may commence discharging immediately on arrival, and discharge continuously, day, night, Sundays, and holidays, any custom of the port to the contrary notwithstanding, the Collector of the port being hereby authorized to grant a general order for discharge immediately on arrival, and if the goods be not taken from the steamer by the consignee directly they come to hand in discharging the steamer, the master or steamer's agents to be at liborty [liberty] to enter and land the goods, or put them into craft or store at the owner's risk and expense, when the goods shall be deemed delivered and steamer's responsibility ended, but the steamer and carrier to have a lien on such goods until the payment of all costs and charges so incurred.

8. Also, that if on a sale of the goods at destination for freight and charges, the proceeds fail to cover said freight and charges the carrier shall be entitled to recover the difference from the shipper.

9. Also, that full freight is payable on damaged or unsound goods; but no freight is due on any increase in bulk or weight caused by the absorption of water during the voyage.

10. Also, freight payable on barrels delivered full, partly full or empty.

11. Also, that in the event of claims for short delivery when the steamer reaches her destination, the price shall be the market price at the port of destination on the day of the steamer's entry at the custom house, less all charges saved.

12. Also, that steamer shall not be liable for splits, shakes or breakage to lumber or logs.

13. Also, that where grain is stowed together with other grain without separation, either from the same or another shipper, each bill of lading shall bear its proportion of loss and / or damage, if any.

14. Also that merchandise on wharf awaiting shipment or delivery be at shipper's risk of loss or damage not happen-

ing through the fault or negligence of the owner, master, agent or manager of the steamer, any custom of the port to the contrary notwithstanding.

15. Also, that this bill of lading, duly indorsed, be given up to the steamer's consignee in exchange for delivery order.

16. Also, that freight prepaid will not be returned, goods lost or not lost.

17. Also, that parcels for different consignees collected or made up in single packages addressed to one consignee pay full freight on each parcel.

And finally, in accepting this bill of lading, the shipper, owner and consignee of the goods and the holder of the bill of lading, agree to be bound by all its stipulations, exceptions and conditions whether written or printed, as fully as if they were all signed by such shipper, owner, consignee or holder.

In witness whereof, the master or agent of the said steamship hath affirmed to original and duplicate bills of lading, all of this tenor and date, one of which being accomplished, the other to stand void.

By the authority of the owners.

The Texas Transport and Terminal Co., Inc., as Agents.
Per pro W. H. HENDREN, Local Manager.

Custody bill of lading issued under agreement with the Liverpool Bill of Lading Conference (1907) Committee.

(Sig) N. O. PEDRICK.

Dated at New Orleans, Apr. 23, 1910.

928 (On back of custody bill of lading:)

(Signed) PASSÉ A L'ORDRE.
DE PAUL CHARDIN.
STEELE, MILLER & CO.

Consulate of the United States of America, at Havre, France.

I certify that I have compared the present document with the original and find it identical.

Witness my hand and official seal this 27th day of May, 1910. (Signed) JOHN PRESTON BEECHER,
Vice Consul of the United States of America at Havre, France.

American Consular Service $2 Fee Stamp (Cancelled 27 Mai 1910.) (Seal) Exhibit No. 44.

929 Exhibits numbered 45 to 53, inclusive, being custody bills of lading, omitted per instructions.

* * * * * * * *

Abstract of Drafts of Steele, Miller & Co., Drawn for Acct. Paul Chardin on Paul Chardin, Paris, and the Comptoir d'Escompt of Mulhouse, Havre.

Dates	Cipher	Marks	Quantities	Amt. Drafts	Date of Acceptance	Date of Expiration	Bank Commission	
1909					1909	1909		
Sept. 21st	Time	QSET	100B/	$6,450.81	Oct. 5th	Dec. 4th		
"		QBIM	100	6,522.04	"	"		
"		QDWC	100	6,495.06	"	"		
"		QEAN	100	6,449.50	"	"		
"		QINO	100	6,430.13	"	"		
"		RWOU	100	6,436.30	"	"		
"		RACB	100	6,375.09	"	"		
"		ROSX	100	6,463.67	"	"		
"		ROTO	100	6,430.55	"	"		
"		RTOW	100	6,374.96	"	"		
			1000B/	64,428.13			3-16%	$120.79
Sept. 30th	Billy	RYLT	100	6,488.27	Oct. 18th	Dec. 16th		
"		REFL	100	6,455.86	"	"		
"		QMOI	100	6,554.18	"	"		
"		ROTU	100	6,479.80	"	"		
"		RUIA	100	6,518.20	"	"		

THIS PAGE IS BOUND

VERTICAL IN BOOK

"		QISM	100	6,509.20	"	"		
"		RXZA	100	6,538.01	"	"		
"		RPSV	100	6,533.88	19th	18th		
"		GBIZ	100	6,553.63	"	"		
"		QROI	100	6,532.90	"	"		
			1000B	65,163.93			3-16%	$122.18
						1910		
Nov. 1st	Hyatt	RSTX	100	7,884.88	Nov. 13th	Jan. 12th		
		RVFC	100	7,883.17	"	"		
		RINA	100	7,620.62	15th	14th		
		ROUD	100	7,675.93	16th	15th		
		RSKN	100	7,884.42	"	"	3 days sight on Comptoir d'Escompt de Mulhouse for account Paul Chardin, Havre.	
		RGIB	100	7,699.15	"	"		
		RAGS	100	7,853.72	"	"		
		ROUT	100	7,627.78	"	"		
		RBZX	100	7,868.85	"	"		
		RFLE	100	7,902.18	"	"		
		RWMU	100	7,769.23	"	"		
		RJLX	100	7,778.62	Dec. 1st	30th		
			1200B	93,448.55			3-16%	$163.19

14242.

EXHIBIT No. 59.

Abstract of Drafts of Steele, Miller & Co., Drawn for Acct. Paul Chardin on Paul Chardin, Paris, and the Comptoir d'Escompt of Mulhouse, Havre.

Dates	Cipher	Marks	Quantities	Amt. Drafts	Date of Acceptance	Date of Expiration	Bank Commission	
948			Continuation.					
1909 Dec. 29th	RITA	RTOD	100B/	7,705.98	1909 Dec. 31st	1910 Mch. 1st		
"		RSPW	100	7,606.28	Jany 3/10	4th		
"		RJAC	100	7,455.83	"	"		
"		REAA	100	7,553.64	"	"		
"		RTNG	100	7,505.54	"	"		
"		RDOP	100	7,649.09	"	"		
"		RAHC	100	7,512.00	"	"		
"		RSTH	100	7,549.02	"	"		
"		RARU	100	7,537.07	"	"		
"		RBAW	100	7,507.28	"	"		
"		RGAP	100	7,534.06	"	"		
"		RERC	100	7,594.27	5th	6th		
			1200B/	90,780.16			3-16%	$170.21

564

1910								
Jany. 27th	Geof	R I N O	100	7,215.00	Feby. 11th	April 12th		
		R B X K	100	7,370.33	"	"		
		R T P N	100	7,357.34	"	"		
		R S O U	100	7,245.93	"	"		
		R D C B	100	7,199.89	"	"		
		R N A M	100	7,361.77	12th	13th		
		R T H F	100	7,200.04	"	"		
		R M B E	100	7,246.51	"	"		
		R N O I	100	7,153.41	"	"		
		R M U T	100	7,046.48	"	"		
			1000B	72,696.70			3-16%	$136.31
Mch 24th	Kaibe	R Z Y A	100	7,655.48	April 8th	June 7th		
		R W T A	100	7,679.82	"	"		
		R K N G	100	7,604.27	"	"		
		R L T O	100	7,674.39	"	"		
		R G C A	100	7,586.67	"	"		
		R M E N	100	7,569.70	"	"		
			600B	45,770.33			3-16%	$85.82

The 1000 bales "Geof" are the bales arrested on board of Steamer Texas and in dispute in this lawsuit. The 600 bales Kaibe are the bales which are completely missing and which Paul Chardin claims in the Bankruptcy Estate of Steele, Miller & Co., Corinth, Miss.

EXHIBIT No. 60.

Quantities of Monthly Deliveries for Each Month.

Contract dates with Paul Chardin.	Quantity Bales	Quality	1909 Oct	1909 Nov	1909 Dec	1910 Jan	1910 Feb	1910 Mch	1910 Apl	1910 May	1910 June	1910 July	1910 Aug	1910 Sept	1910 Oct	1910 Nov	1910 Dec
May 29/09	2400B/	Good Middg. G.C.& St. 28/29 m/m		200	200	200	200	200	200	200	200	200	200	200	200		
June 4/09	1400 "	do		000	200	200	200	200	200	200	200						
July 24/09	1000 "	do	200	200	200	200	200										
Augt. 12/09	2000 "	do		400	400	400	400	400									
July 30/09	2400 "	do				200	200	200	200	200	200	200	200	200	200	200	200
Totals	9200	of which	B	B	B	B	B	B	B	B	B	B	B	B	B	B	B
		Monthly Totals	200	800	1000	1200	1200	1000	600	600	600	400	400	400	400	200	200

14242.

566

EXHIBIT No. 122.

Lefebre & Chardin.
Add Teleg.
Indigo—Paris.

Paris.
Rue de la Rochefoucauld.
Paul Chardin, Succr.

Number of B/ imported 42,700B
Amt. of Acceptances $294,118.24

Detail of Acceptances Steele, Miller & Co., from Sept. 1st 1909 to 1910.

Dates of Acceptce.		No. of B/	Amts.	Expiration		Over 1100B/	80,522.76	Dec. 4
1909					"	100	6,375.09	"
Nov. 16th		100B	7,853.72	Nov. 19th	"	100	6,430.35	"
"		100	7,884.42	"	"	100	6,374.96	"
"	Drawn at 3 days	100	7,699.14	"	"	100	6,430.13	"
"	sight on Comp.	100	7,769.23	"	"	100	6,436.28	"
"	d'Escompte de	100	7,902.18	"	Oct. 18th	100	6,518.20	"
"	Mulhouse.	100	7,868.85	"	"	100	6,554.18	"
"		100	7,627.78	"	"	100	6,455.86	"
Oct. 5th		100	6,495.07	Dec. 4th.	"	100	6,488.08	"
"		100	6,450.81	"	"	100	6,509.20	"
"		100	6,449.50	"	"	100	6,538.03	"
"		100	6,522.05	"				
"						2300B/	15,8097.18	
		1100B/	80,522.76					

14242.

EXHIBIT No. 122.

Lefebre & Chardin.
Add Teleg.
Indigo—Paris.

Paris.
Rue de la Rochefoucauld.
Paul Chardin, Succr.

951

Number of B/ imported 42,700B
Amt. of Acceptances $294,118.24

Detail of Acceptances Steele, Miller & Co., from Sept. 1st 1909 to 1910.

Dates of Acceptce.		No. of B/	Amts.	Expiration		Over 1100B/ 100	80,522.76	Dec. 4
							6,463.67	"
	(Over	2300B/ 100	158,097.18		1910	Over 4300B/ 100	306,226.50	Mch. 6
Oct. 18th		100	6,479.80	Dec. 17th	Jany. 5th	100	7,594.22	April 12
"	Draft Reembusted	100	6,553.63	"	Feb. 11th	100	7,245.80	"
"	do	100	6,532.89	"	"	100	7,199.89	"
"		100	6,533.68	"	"	100	7,215.00	"
Nov. 13th		100	7,884.88	Jan. 12th	"	100	7,370.33	"
"		100	7,883.17	"	"	100	7,357.33	"
15th		100	7,620.61	14th	"	100	7,200.04	"
16		100	7,675.93	15th	"	100	7,361.77	"
Dec. 1st		100	7,778.61	30th	"	100	7,346.48	"
31st		100	7,705.98	Mch. 1st	"	100	7,153.41	"
Jany. 3/10		100	7,455.82	4th	"	100	7,246.51	"
"		100	7,553.64	"	April 8th	100	7,655.49	June 7
"		100	7,606.38	"	"	100	7,586.67	"
"		100	7,507.28	"	"	100	7,569.70	"

"	100	7,537.07	"	"	100	7,674.39	"
"	100	7,549.02	"	"	100	6,704.27	"
"	100	7,582.00	"	"	100	7,679.43	"
"	100	7,505.54	"		6000B	432,287.77	
"	100	7,649.10	"				
"	100	7,534.06	"				
	4300B	306,226.50					

952 EXHIBIT 123.

Copy.

Havre, May 3rd, 1910.

Cie Gle. Transatlantique,
New Orleans Agency.

Sirs:

Permit me first to thank you for the information you kindly furnished me on the demand of your agency here, in regards to 600 B/C delivered to your company by the Shepard Cotton Co. of your city for account of Messrs. Steele, Miller & Co. of Corinth, Miss.

Since the 600 B. had been delivered to you and were to be loaded on S/Ss Texas and Louisiane of your line, I was very much surprised to learn that the 600 B. had been taken back from you and that you allowed the shippers to take them away on return of the B/L delivered by you.

I reserve all my legal rights on that matter and have cabled this morning as follows:

"Owner through ladings protest against giving up 600 B. delivered your company," which I confirm you by the present.

Accept, sir, my sincere salutations.

Marked as follows:

R L T O 100 B., R M E N 100 B., B K N G 100 B.—300 B.
By S/S Louisiane.
R W T A 100 B., R Z Y A 100 B., R G C N 100 B.—300 B.
By S/S Texas.

953 EXHIBIT NO. 124.

The Texas Transport et Terminal Co.

New Orleans, U. S. A., May 18th, 1910.

Mr. Paul Chardin,
101 Boulevard de Strasbourg,
Havre, France.

Dear Sir:

We acknowledge receipt of your favor of 3rd inst. As you will have understood from advices through the Havre agency

of the French Line, the 600 bales cotton, the marks of which appear in your letter, were delivered to us by the Shepard Cotton Co. and they held our custody bills of lading for same. As they surrendered us the bills of lading, duly indorsed and demanded the cotton, there was nothing for us to do but to comply with their demand. For us to have taken any other course would have made us liable for any damages which they may have suffered. The cotton in question was delivered locally and was not shipped from any interior point on through bills of lading.

Yours faithfully.

954 EXHIBIT NO. 125.

Copie.

Havre, 2nd June, 1910.
Cie' Gle Transatlantique,
New Orleans Agency,
New Orleans, La.

Dear Sir:

I am in receipt of your favor of 18th ulto., of which contents has had my best attention.

As you were aware that the 600 b/, in your custody, were shipped for account of a Havre firm, who sent you the marks through your Havre agency, you ought never to have consented to deliver these cottons, without referring to the owner of the through bills of lading for the specified marks which were to be shipped, according to your cables per S. S. "Louisiane & Texas."

Failing to do that, you have incurred a great responsibility and I am obliged to inform you that I make a reserve, in case further steps are taken in the matter.

I remain, dear sir,

Very truly yours,

955 United States District Court, Eastern District of Louisiana.

J. A. E. Pyle, Trustee,
vs. No. 14240.
Texas Transport & Terminal Company, et als.

Deposition of FRANS LYZELL, taken under commission issued out of the clerk's office, United States District Court, Eastern District of Louisiana, on July 17th, 1911, in the above entitled and numbered cause, on behalf of the Bank of Mulhouse, one of the defendants. Filed Oct. 24, 1911.

956 Deposition of witnesses, produced, sworn and examined the twenty-fifth of September in the year one thousand nine hundred and eleven in the City of Havre, Republic of France, under and by virtue of a commission issued out of the District Court of the United States, holding sessions in and for the Eastern District of Louisiana, in a certain cause therein pending and at issue, wherein J. A. E. Pyle, trustee, is complainant, and the Texas Transport and Terminal Company, et als., are defendants.

FRANS LYZELL, of No. 93 Boulevard de Strasbourg, Havre, France, aged 31 years, being duly and publicly sworn, pursuant to directions hereto annexed, and examined, doth depose and say as follows:

Interrogatory No. 1:

Please state your name, age, residence and occupation. How long have you been engaged in your present occupation?

To the first interrogatory he saith:

My name is Frans Lyzell, thirty and one years of age. I am residing in Havre, 93, Boulevard de Strasbourg. I am the director of the Banque de Mulhouse in Havre, since the first August, 1909, and Vice Consul of Sweden in the same town since the 15th October, 1910.

Before I became the director of the Banque de Mulhouse I was already in Havre as clark [clerk] in the "American Cotton Company" since 1900 till 1905, next as clark [clerk] in the Havre agency of the "Societe Generale Pour Favoriser le

Developpement du Commerce et de L'Industrie en France," since 1905 till 1907, and, at last, since 1907 till 1909 as attorney in the "Comptoir D'Escompte de Mulhouse" in Havre.

Interrogatory No. 2:

Do you know the Bank of Mulhouse, a defendant in the above entitled cause? If so, state whether or not it is an incorporated institution. In what country was it incorporated? What is the nature of its business? In what place or places has it a business domicile? What is its capital?

957 To the second interrogatory he saith:

As director of the Banque de Mulhouse, Havre agency, I am of course completely cognizant, from personal experience, of this society.

The Banque de Mulhouse is a limited company, regularly established according to the terms of a legal act received by Mr. Hicker, notary, residing in Mulhouse, (Alsace).

The Banque de Mulhouse is engaged in the business of banking. The Banque de Mulhouse, whose head office is at Mulhouse, has established branch offices at Colmar, Strasbourg, Paris, Havre, Epinal, Monteliard, and Belfort.

Its actual capital is, Francs 36,000,000, and about Francs 14,000,000 reserve fund.

Interrogatory No. 3:

Are you connected with the Bank de Mulhouse? If so, in what capacity and for how long? State generally the nature and scope of your authority and duties.

To the third interrogatory he saith:

I am director of the Havre agency of the Banque de Mulhouse since August 1st, 1909.

I hold a general power of attorney from the Board of Directors, who administer the affairs of the Banque de Mulhouse. As director of the Havre agency, my duty is to supervise all the business of that branch office under the control of the Board of Directors, to whom I am responsible for my administration.

Interrogatory No. 4:

If, in answer to previous interrogatories, you have said that

the Bank of Mulhouse was engaged in the banking business at Havre, France, state how long it has been so engaged, and state in a general way the nature and extent of such business. Did it include the furnishing and advancing of funds for the purchase of cotton and the taking and holding of the title to the said cotton?

To the fourth interrogatory he saith:

958 The Banque de Mulhouse opened its branch office at Havre on August 17th, 1909, and as before said, is engaged in the business of banking. The nature of its business is accounts currents, deposits, credits for reimbursement against documentary drafts, discounting drafts, warrants, exchanges, orders, arbitrations of exchange for the clients, interests, advances upon goods, etc.

With regard to the credit for reimbursement against documentary drafts, we allow Havre cotton importers to let their American customers draw drafts on the Banque de Mulhouse, for the amount of the cotton value (less freight, insurance, 6% loss in weight), which we accept for the account of our clients against delivery into our possession of a bill of lading which represents the cotton and which is annexed to the draft with other documents, most usually insurance certificates and invoices.

Interrogatory No. 5:

Do you know the firm of Scheuch and Company, of Havre, France? How long have you known said firm? Who are the individual members thereof? State, if you know, the business in which said firm was engaged during the time you have known it.

To the fifth interrogatory he saith:

I know the firm of Scheuch & Co. of Havre. I have known them for 8 or 9 years. The only members of that society are Messrs. Ferdinand Scheuch and Albert Schilling. Messrs Scheuch & Co. are both cotton importers and cotton merchants and also agents of American cotton exporters.

Interrogatory No. 6:

State, if you know, the general reputation enjoyed by said firm at Havre for business integrity and fair dealing from the

time you first knew it down to and including May 7, 1910. State, if you know, its general reputation, during the same period, as to its solvency and financial responsibility. What sort of credit did it have at Havre?

959 To the sixth interrogatory he saith:

It was only in August, 1906, when I was clark [clerk] at the Societe Generale in Havre, that I began to be in business relations with Messrs. Scheuch & Co. and I am able to affirm that since that time till May, 1910, the firm had an excellent reputation on the market of Havre from the point of view of their integrity and they have always done business with all the big cotton firms in Havre.

Looked upon as very good business men, knowing very well their business, they started with a very small capital and in 1909 the wealth of Messrs. Scheuch and Schilling was estimated at about Francs 700,000.

The Scheuch & Co. firm enjoyed a very firm credit on the market.

Interrogatory No. 7:

How was said firm regarded during said period as to its financial responsibility and business integrity by the Bank of Mulhouse and yourself? State whether or not during said period you became aware of anything which gave you any cause to doubt the solvency or honesty of said firm.

To the Seventh interrogatory he saith:

The good opinion held on the market of Havre of the firm of Scheuch & Co. from the point of view of financial responsibility and business integrity has during the same period been also shared by the Banque de Mulhouse and myself, and during the same period I have never heard or known anything which could give me any cause to doubt of the solvency or the honesty of the firm.

Interrogatory No. 8:

During said period did your firm have any business arrangements or dealings with the said Scheuch and Company? If yes, please give a clear, full statement setting forth such business arrangements or dealings.

To the eighth interrogatory he saith:

The business arrangements we have had with Scheuch & Co. are similar to those which we have had with the other firms on the Havre market. That is to say, we give a
960 credit of reimbursement for a certain number of bales, the same credit being realized by documentary drafts (bills of lading, insurance certificates, and invoices); in consequence the documents (bills of lading, insurance certificates, invoices) were delivered to us against our acceptance of the draft to which they were attached. Besides this, to guarantee ourselves against the fluctuations of the market, we invariably required that those cottons should be covered with a sale of futures in our name registered at the "Caisse de Liquidation" du Havre.

When the goods arrived, we claimed them from the consignees of the steamer; we fulfilled ourselves the custom-house formalities, and we stored the goods in our name in the public storehouse authorized by the state, as a security in exchange of our acceptance of the draft, in order to be able, when due, to pay it and, in that way, to consent to a prolonged advance by debit in the account current of Scheuch & Co. of the amount of the paid draft.

Now supposing that a lot of cotton (by example 100 bales, part of the goods against which we have accepted documentary drafts) was sold by Scheuch & Co., we only gave to that firm an order of delivery of 100 bales, against a money payment of the actual value of the cotton and against a contract of repurchase of futures at the "Caisse de Liquidation" du Havre. In this way there was no necessity for us to know to whom and in which conditions the sale was carried out.

Interrogatory No. 9:

If, in answer to previous interrogatory, you have stated that the Bank de Mulhouse authorized Scheuch and Company to have drafts drawn on said bank by that firm's American customers for the purchase price of cotton, state, if you have not already done so, whether the arrangements provided that such drafts should always be accompanied by documents which would give the bank title to the cotton described in the draft.

Please state whether or not the Bank of Mulhouse would have authorized the drawing of said drafts or would have accepted the same if it had not believed that on acceptance it ac-

quired title to and possession and control of the cot-
961 ton described in the drafts.

What arrangement, if any, did the said bank have with Scheuch and Company in respect to the sale of futures in connection with the drawing or acceptance of any such drafts. Explain in whose names futures were sold and what was the purpose of such sale of futures.

To the ninth interrogatory he saith:

The credit we had opened to Scheuch & Co. was a credit of reimbursement, to be realized by documentary drafts to be drawn on us by the American cotton exporters in business relations with Scheuch & Co.

Therefore, the question could never arise for the Banque de Mulhouse to accept a draft without any document, and our conviction, as European bankers is that when you retain in your possession a document appertaining to goods described in the draft you have accepted, you have indisputably sole rights over those goods.

The Banque de Mulhouse has never authorized and still less would have accepted a documentary draft if it had not the firm conviction that the documents which were attached to the draft and which were delivered against its acceptance gave it complete rights over the goods described in the said draft.

As we have said already, we have always required of the Scheuch & Co. firm, in order to protect ourselves against the fluctuations of the market, to deliver into our hands at the same time or before the draft was presented to us, a sale of futures for the same number of bales, registered in our name at the Caisse de Liquidation du Havre. The futures were invariably sold at the Havre Exchange through official brokers and registered in our name at the Caisse de Liquidation du Havre. In that way we were absolutely safe from any fluctuation in the market, for we had before us a purchase of available goods and a sale of futures to cover us. The market could go as it liked, we were perfectly indifferent, for we were covered against any fluctuation.

Interrogatory No. 10:

State whether or not the Bank of Mulhouse had any interest
in or knowledge of the contracts or arrangements be-
962 tween Scheuch and Company and the shippers of the
cotton covered by such drafts.

State whether or not the said Bank extended or intended to extend any credit to said shippers of the cotton.

To the tenth interrogatory he saith:

The Banque de Mulhouse has never known anything of the contracts or arrangements that the firm Scheuch & Co. could have with the American cotton exporters who drew drafts on it on account of Scheuch & Co. The Banque de Mulhouse knew nothing at all about those contracts or arrangements and the only benefit we obtained through those operations was the regular banker's benefit, according to the commercial customs of Havre, either 1/4% or 3/16% as commission for acceptance and Francs 2.50 for each contract registered at the Caisse de Liquidation in our name and every month during the continuance of the operation till its settlement. In addition to this, the Havre agency has business relations only with merchants who reside in Havre and are registered in that town, and it is expressly forbidden to it to transact business with firms outside Havre; therefore, the credit opened with named Scheuch & Co. could never extend and has never extended to an American exporter of cotton.

Interrogatory No. 11:

Do you know the firm of Steele, Miller and Company or any of its individual members? What is the nature or extent of your acquaintance with said firm or its individual members?

To the eleventh interrogatory he saith:

I have known by name the firm of Steele, Miller & Co. for 3 years in consequence of the cotton business which it carried on the Havre market with different firms in the market. I do not know any member of the Steele, Miller & Co. firm except Mr. Linde, whom I have seen during his stays in Havre. Messrs. Scheuch and Schilling had introduced him to me as partner of the Steele, Miller & Co. firm and as a friend and a former clark [clerk] in their firm.

The Banque de Mulhouse has never carried on any transaction with the firm of Steele, Miller & Co. and it
963 never had occasion to enter into the slightest correspondence with it, except the notices of drafts that Steele, Miller & Co. sent to it in order to inform it that they had drawn some draft or other on account of Scheuch & Co.

Interrogatory No. 12:

While the arrangements aforesaid existed between the Bank of Mulhouse and Scheuch and Company, what knowledge of or interest in the contracts or arrangements between Scheuch and Company and Steele, Miller and Company did said bank have?

State whether or not said bank ever extended or intended to extend any credit to the said Steele, Miller and Company.

To the twelfth interrogatory he saith:

Neither I nor the Banque de Mulhouse have never known anything about the arrangements existing between Scheuch & Co. and Steele, Miller & Co. Our benefit, in the reimbursements agreements fixed up between Scheuch & Co. and us was only the benefit I have pointed out to you in my reply to the interrogatory No. 10; that is to say, it was limited to an acceptance commission of 1/4% or 3/16% and at Fr. 2.50 per contract of sale of futures registered in the Caisse de Liquidation in our name and monthly during the continuation of the transaction. The Banque de Mulhouse has never accorded a credit to Steele, Miller & Co. nor has it had the intention to accord any such credit to that firm, for the good reason that the Havre agency of the Banque de Mulhouse had the right to negociate [negotiate] only with firms registered in Havre, and that it was expressly forbidden to it to negociate [negotiate] with any firm outside Havre.

Interrogatory No. 13:

Please give the date or dates of the first draft or drafts of Steele, Miller and Company which were accepted by the Bank of Mulhouse, under the aforesaid arrangements with Scheuch and Company. Give also the date or dates of the last of such drafts of Steele, Miller and Company accepted by the Bank of Mulhouse. Please state the total number of bales
964 of cotton during said period thus covered by drafts of Steele, Miller and Company accepted by the Bank of Mulhouse.

To the thirteenth interrogatory he saith:

By virtue of the aforesaid arrangements with Scheuch &

Co. the first draft accepted by the Havre agency of the Banque de Mulhouse and drawn by Steele, Miller & Co. was accepted on the 13th September, 1909, by the Banque de Mulhouse; and the last draft drawn by that firm was accepted by virtue of the same arrangements on the 14th February, 1910, by the Banque de Mulhouse. The Havre agency of the Banque de Mulhouse has accepted on account of Scheuch & Co. drafts drawn by Steele, Miller & Co. against a total number of 25,100 bales of cotton during the said period from the 13th September, 1909, till the 14th February, 1910, forming a total amount of Francs 9,067,652.35.

Besides this, the Banque de Mulhouse, at its central office at Mulhouse, acting on behalf of the Havre agency, has accepted on account of the Cotton Commission Co., with the full and entire guarantee of Scheuch & Co., drafts drawn by Steele, Miller & Co. against a total number of 3,100 bales of cotton during the period from 15th November, 1909, till the 17th January, 1910, forming a total amount of Mark: 955,081.23.

Interrogatory No. 14:

Did the Bank of Mulhouse pay at maturity all said drafts of Steele, Miller and Company accepted by it? Did it receive all the cotton described in said accepted drafts? If not, please state the number of bales not received and the marks thereof, and the dates and amounts of the drafts drawn against the same. For the purpose of this question and answer, treat the nine hundred bales of cotton concerned in this suit as cotton not received.

To the fourteenth interrogatory he saith:

The Banque de Mulhouse has of course paid when due all the Steele, Miller & Co.'s drafts which it had accepted. It had received all the cotton described on the said drafts accepted, except 1,250 bales composed of 900 bales shipped on the steamer "Texas" included in the 25,100 said bales, and of
965 350 bales destined for Bremen on account of Cotton Commission Co., guaranteed by Scheuch & Co., included in the said 3,100 bales of cotton.

I give you hereafter the description of the 900 bales of the steamer "Texas":

Number of bales.	Marks.	Dates of drafts.	Amounts.	Maturities.
100	RDAR	28 December 1909	40,217.90	10th April 10
100	RURA	28 December 1909	40.697.65	10 April 1910
100	QATR	28 December 1909	41,333.80	10 April 1910
100	RDAK	21 Janvier 1910	36,680.00	3 May 1910
100	RDTN	22 January 1910	36,562.15	3 May 1910
100	RDHO	26 January 1910	37,573.65	9 May 1910
100	RBSA	26 January 1910	37,515.40	9 May 1910
100	RJKS	26 January 1910	37,225.15	9 May 1910
100	QAAR	26 January 1910	37,698.50	9 May 1910

I give you hereafter the description of the 350 bales of cotton for Bremen:

Number of bales.	Marks.	Dates of drafts.	Amounts.	Maturities.
100	RDAR	31 Dec. 1909	Mk. 33,018.50	13 Apr. 1910
100	RVNY	31 Dec. 1909	Mk. 33,171.45	13 Apr. 1910
100	QSAR	31 Dec. 1909	Mk. 34,107.35	13 Apr. 1910
50	RDPS	3 Jan. 1910	Mk. 16,630.30	17 Apr. 1910

Interrogatory No. 15:

With the exception of the cotton described in answer to the last interrogatory as not received, did Steele, Miller and Company perform their obligations in respect to the other drafts and shipments of cotton?

To the fifteenth interrogatory he saith:

With the exception of the cotton described in answer to the last interrogatory as not received, we have nothing to reproach Messrs. Steele, Miller & Co. with; but we never have had any correspondence nor any transaction with them and they never had other obligation to us except to ship the cotton against documents presented to us for acceptance on account of Scheuch & Co.

Interrogatory No. 16:

This is a suit in which J. A. E. Pyle, trustee in bankruptcy

966 of Steele, Miller and Company, is suing to recover nine hundred bales of cotton or the value thereof on the ground that the same were transferred by Steele, Miller and Company, while insolvent, to Scheuch and Company or the Bank of Mulhouse with the intent to prefer Scheuch and Company or the Bank of Mulhouse or both of them—the cotton in question being marked and numbered as follows:

100	bales of cotton marked	R D A R	1/100
100	bales of cotton marked	R U R A	1/100
100	bales of cotton marked	Q A T R	1/100
100	bales of cotton marked	R D A K	1/100
100	bales of cotton marked	R D T N	1/100
100	bales of cotton marked	R D H O	1/100
100	bales of cotton marked	R B S A	1/100
100	bales of cotton marked	R J K S	1/100
100	bales of cotton marked	Q A A R	1/100

Please state whether the Bank of Mulhouse ever accepted any drafts drawn by Steele, Miller and Company against cotton so marked and numbered. If yes, please state when and by whom said drafts were presented for acceptance and the dates of acceptance.

What documents were attached to each of said drafts when presented for acceptance? What became of said documents when the drafts were accepted? If you say that they were delivered to the acceptor of the drafts, state whether or not they have since remained in its possession or control.

Have the drafts since been paid? If so, when and by whom?

Please annex as part of your answer to this interrogatory the said nine drafts; and if you have answered that there were attached thereto bills of lading, insurance certificates and invoices, please likewise annex to each draft the bill of lading, insurance certificate and invoice attached thereto.

To the sixteenth interrogatory he saith:

The Banque de Mulhouse has accepted the drafts of Steele, Miller & Co. indicated on the list which follows against 900 bales of cotton bearing the marks and numbers which are also indicated on the same list. The said drafts have been presented for acceptance to the Banque de Mulhouse by the different bankers and at the diverses dates indicated on the same

list, and accepted by the Banque de Mulhouse at the
967 dates indicated on the same list:

No.	Marks.	Amounts.	Presented by	at the date of acceptance.	
100	RDAR	40,217.90	10 Jan. 1910 by Comptoir National D'Escompte de Paris	10 Jan. 1910	
100	RURA	40,697.65	do	do	10 do
100	QATR	41,333.80	do	do	10 Jan. 1910
100	RDAK	36,680.00	2 Feb. 1910 by the Credit Lyonnais	2 Feb. 1910	
100	RDTN	36,562.15	2 do do Munroe & Co.	2 do	do
100	RDHO	37,573.65	8 do do by Societe Generale	8 Feb. 1910	
100	RBSA	37,515.40	8 do do	do	8 do do
100	RJKS	37,225.15	8 do do	do	8 do do
100	QAAR	37,689.50	8 do do	do	8 do do

Each of these drafts at the moment of the presentation at acceptance by the Bank of Mulhouse was accompanied by two copies of "Through Bills of Lading" (original and duplicates), also by two copies of insurance certificates (original and duplicate) and copy of the invoice.

Each of these drafts correspond with the numbers and the marks of bales exactly as they were indicated on the documents attached to the drafts, and those drafts were presented with the note: "Documents against acceptance." These various documents had to be delivered to us and were delivered to us against the acceptance of the said drafts by the Banque de Mulhouse.

We kept them in our safe as guarantees of our acceptances in order to be able to receive the goods when they arrived, if they did arrive. The documents appertaining to those 900 bales have never ceased to be in our possession and they are still in our hands. The drafts have been paid of course by the Banque de Mulhouse when due, that is to say, at the dates indicated on a previous list (Interrogatory No. 14).

They have been paid by Paris agency of the Banque de Mulhouse, where they were made payable.

I annex to this deposition the nine drafts, the nine through

bills of lading (originals and duplicates), the nine insurance certificates (originals and duplicates), and the nine
968 invoices, appertaining to the nine hundred bales of cotton, as exhibit No. 1.

Interrogatory No. 17:

State whether or not the said bank had any reason at the time for not believing that bills of lading attached to the drafts were genuine? What was the belief of the bank on the subject?

What, if any, reason had the bank at the time for not believing that the cotton described in the said drafts and the bills of lading had been actually shipped and was on the way? What was the belief of the bank on the subject?

What was the belief of the bank in respect to the transfer to it of said bills of lading and its possession thereof being sufficient to give it possession and dominion over said cotton and entitling it to receive the same on its arrival?

To the seventeenth interrogatory he saith:

The Bank de Mulhouse had not at that time the least reason for doubting that the bills of lading attached to the said drafts were not genuine. The bank was absolutely convinced that the bills of lading were perfectly regular, that the cotton described therein had been actually received by the railroad and was on the way to Havre. The bank was also convinced that the possession of the bills of lading was sufficient to give it the entire possession and right over the said cotton and to give it sole the right to receive the same, on its arrival at Havre.

Interrogatory No. 18:

If, in answer to previous interrogatory, you have stated that the banks believed that said bills of lading were genuine, that the cotton described therein and in the drafts had been actually shipped and was on its way to Havre, and that the transfer to it of said bills of lading and its possession thereof gave it possession of and dominion over said cotton and entitled it to receive the same on its arrival, state what effect said beliefs had upon the action of the bank in accepting said drafts. If the bank had not entertained such beliefs, would it have accepted, or would it have refused to accept, said drafts?

969 To the eighteenth interrogatory he saith:

If the Banque de Mulhouse had not been convinced of the genuine value of the bills of lading and of the validity of the rights acquired by their delivery over the goods that they represented, the Banque de Mulhouse could never have given its acceptance to the drafts to which the documents were attached. If it had had the least doubt the bank would naturally have refused to accept the said drafts. Its full confidence in the bills of lading is the only explanation of its acceptances.

Interrogatory No. 19:

Did the said bank ever receive any bills of lading issued by the Compagnie Generale Transatlantique, each covering one hundred bales of cotton, corresponding with the marks and numbers of the nine lots of 100 bales of cotton above referred to?

If yes, state when and how it received said bills of lading and whether a letter or note accompanied the same. Were there two sets of said bills of lading? State what has become of the originals? Annex the other set of said bills of lading to your answer to this interrogatory. Annex also the letter, if any accompanied the bills of lading, and state whether it is truly the letter which you received at the time, and from whom it was received.

In whose possession and control have been the said bills of lading of the Compagnie Generale Transatlantique since said bank received the same?

In whose possession and control have been the bills of lading attached to the said nine drafts since the said bank received the same?

To the nineteenth interrogatory he saith:

The Banque de Mulhouse has received custody bills of lading issued by the Compagnie Generale Transatlantique and each covering 100 bales of cotton, corresponding with the marks and numbers of the nine lots of 100 bales of cotton each described above. They were delivered at our offices by Scheuch & Co., viz., three the 3rd of May and six the 7th of May, 1910,

970 accompanied by two notes issued by the firm of Scheuch & Co., which I annex to this deposition as exhibit No. 2.

They are actually the two notes which were brought to us the 3rd and the 7th of May, 1910, by a clark [clerk] of the firm of Scheuch & Co., to our office, and which accompanied the said custody bills of lading.

Each custody bill of lading was in duplicate. The originals and the duplicates have never ceased to be in the possession and under the control of the Banque de Mulhouse and are still in its hands. I annex to this deposition as exhibit No. 1 the set of duplicates of these custody bills and I keep the set of their originals.

In the same way the bills of lading which were attached to the nine drafts relating to the 900 said bales have never been out of the possession or of the control of the Banque de Mulhouse since the moment when the said bank received them and are still actually in the possession and under the control of the said bank.

Interrogatory No. 20:

At the time the bank received the said bills of lading of the Compagnie Generale Transatlantique, hereafter called custody bills of lading, did you or the bank know that the said bills of lading attached to the drafts were not genuine but were forged or bogus?

Did you or the said bank know or believe at the time that said custody bills of lading represented cotton acquired and shipped by Steele, Miller and Company subsequently to the drawing and forwarding of said drafts and the said attached bills of lading, or did you and the bank believe that said custody bills of lading represented the same cotton as the bills of lading attached to the drafts apparently represented?

What knowledge or information had you or the said bank at any time prior to the receipt of said custody bills of lading that Steele, Miller and Company intended to procure and forward to the bank said custody bills of lading?

It is charged on behalf of the complainant that at
971 some time subsequent to the date of said drafts and the attached bills of lading Steele, Miller and Company acquired and assembled nine hundred bales of cotton, caused the same to be marked and numbered to correspond with the numbers and marks described in the said drafts, and caused the same to be shipped to New Orleans and thence by steamer of the Compagnie Generale Transatlantique to Havre.

being the same cotton represented by the said custody bills of lading. State what knowledge or information you or the said bank had of these alleged acts of Steele, Miller and Company at the time the bank received said custody bills of lading.

To the twentieth interrogatory he saith:

At the time that the bank received the said custody bills of lading, neither I nor the bank knew that the said bills of lading attached to the drafts were not genuine, and that they were false or had been forged. Neither I nor the bank knew or believed at that time that the said custody bills of lading represented cotton acquired and shipped by Steele, Miller & Co. subsequently to the drawing and sending of the said drafts and the said bills of lading accompanying them. The Banque de Mulhouse and I believed that the said custody bills represented the same cotton as the through bills attached to the drafts we had already in our possession. Neither I nor the bank knew or was informed at any time prior to the receipt of said custody bills of lading, that the custody bills existed and that Steele, Miller & Co. intended to procure them and forward them to the bank.

At the date on which the Banque de Mulhouse received the said custody bills of lading neither I nor the bank had any knowledge or information that at some time subsequent to the date of said drafts and the bills of lading which accompanied them, Messrs. Steele, Miller & Co. had acquired and put together nine hundred bales of cotton, had caused the same to be marked and numbered to correspond with the numbers and the marks described in the said drafts, and had caused the same to be shipped to New Orleans and thence by a
972 steamer of the Compagnie Generale Transatlantique to Havre, the same cotton so shipped being represented by the said custody bills of lading.

Interrogatory No. 21:

Please state whether on any prior occasion or occasions the said bank had received similar custody bills of lading purporting to represent the same cotton covered by through bills of lading attached to drafts for the price of cotton, which had been previously accepted by the bank. If yes, please state on what occasions, and what, if any, explanations were given,

and whether the same were believed by the bank. Please answer this question fully.

What effect had such previous experience and explanation in causing the said bank to suspect or not to suspect fraud or wrong on the part of Steele, Miller and Company when it received said duplicating custody bills of lading covering the said nine hundred bales of cotton?

To the twenty-first interrogatory he saith:

On different previous occasions the Banque de Mulhouse had received from Scheuch & Co. similar custody bills of lading representing the same cotton covered by the through bills attached to drafts which had been drawn for the price of the cotton, and which had been previously accepted by the bank; and every time the through bills of lading had been delivered by us to Scheuch & Co. on their demand addressed to us in their notes, which I annex to this deposition as exhibits No. 3.

It was for the first time the 22d December, 1909 (one thousand nine hundred and nine) that the Banque de Mulhouse received in this way from Scheuch & Co. a custody bill, and they received others on the 28th December, 1909, 8, 13, 17, 18 et January, 1910, 2, 7 and 24 February, 1910, 7, 10, 11, 24 and 29 March, 1910, 4, 9, 11, 14, 18, 20 and 25 April, 1910, 3d and 7th May, 1910.

The first time that this exchange was proposed by Scheuch & Co. we asked them for explanations and they replied to us that they had received the custody or port bills of lading directly from Steele, Miller & Co. without charges or
973 draft. They added that Steele, Miller & Co. must have obtain these documents to effect more rapidly the shipment of the cotton at New Orleans and that they must have had probably given a bank guarantee to the steamship company to guarantee the return of the railroad bills of lading; that they had moreover all confidence in Steele, Miller & Co., that firm having always punctually fulfilled its engagements, and that we could be certain that the business in question had nothing irregular about it.

Some days afterwards, in support to those explanations, Messrs. Scheuch & Co. showed to us a letter which they had received from Steele, Miller & Co. on a demand made by them on the same subject, the point having been raised by the Societe Generale.

When Mr. Linde came to Havre, in January, 1910, Messrs. Scheuch & Co. informed us by word of mouth that he had confirmed to them that his firm had made similar arrangements with the railroad and steamship companies, with the idea of obtaining more rapidly the shipment of the cotton in the port. Mr. Linde had added that, from time to time, and especially during the period of big receipts of the crop, the ports were literally blocked by all the arrivals of freight from the interior of the states and that the only way to ship rapidly the cotton was to obtain a custody bill or port bill of lading, according to which the steamship company was engaged to ship the cotton in a steamer designed in the course of ten days. We believed and accepted those explanations, the more easily that as European bankers we are not at all conversant with the details concerning the way in which, in the United States, the cotton is brought by the railroads and goes from the railroad company to the steamship company.

On the other hand, in the course of business we have always accustomed to consider the through bills as documents which, although they give right to goods they represent, must be completed with a subsequent document, emanating from the steamship company.

Until the incident of the 900 bales ex "Texas," the Banque de Mulhouse had never had any sort of difficulty in getting delivery of the cotton on its arrival at Havre, on
974 these said custody bills. We had, therefore, never suspected, and we had no occasion to suspect either a fraud or even an error on the part of Steele, Miller & Co., when, at the dates of the 3rd and 7th May, 1910, Messrs. Scheuch & Co. delivered to us similar custody bills for the 900 bales of cotton above mentioned, of which we had already in hands the through bills of lading.

Interrogatory No. 22:

State, if you know, when and how the said bank, or any representative thereof, learned for the first time that the said bills of lading attached to the said nine drafts were forged or bogus or were claimed to be forged or bogus.

State, if you know, when and how the said bank, or any representative thereof, learned for the first time that the said nine custody bills of lading did not cover, or were claimed not to cover, cotton shipped at the date of said bills of lading

attached to the said drafts, but covered, or were claimed to cover, cotton subsequently acquired and shipped by Steele, Miller and Company.

To the twenty-second interrogatory he saith:

The 8th May, 1910, we were informed by Messrs. Scheuch & Co. that a suit was opened in the United States District Court, Eastern District of Louisiana, at New Orleans, suit which had as result the injunction against the transport of the 900 bales of cotton from New Orleans to Havre.

The bank and myself learned in that way for the first time by the news of that suit, that it was alleged or pretended that the railroad bills of lading attached to the drafts accepted by the Banque de Mulhouse were considered as forged or bogus. The Banque de Mulhouse and myself have also learned for the first time in that way that the 900 bales of cotton of which it had paid the total amount when it paid the drafts appertaining to them, could have not been shipped on the dates on which it was believed that they were shipped, that is to say, on the 27th December, 1909, 20th, 21st, and 25th January, 1910, shown on the through bills of lading
975 and that the nine custody bills of lading covered or were supposed to cover cotton acquired and shipped subsequently by Steele, Miller & Co.

Interrogatory No. 23:

It is charged by complainant that at the time Steele, Miller and Company delivered the cotton covered by the said custody bills of lading to the Compagnie Generale Transatlantique or at the time it forwarded the said custody bills of lading to Havre, or at the time the same came into the physical possession of the Bank of Mulhouse, the said bank knew or ought to have known that Steele, Miller and Company intended thereby to prefer said bank over their other creditors.

Please state whether such charge is true at any of said times, and give the reasons or facts upon which your answer is based.

To the twenty-third interrogatory he saith:

The Banque de Mulhouse had never known, nor suspected, at any date of the following periods that Messrs. Steele, Miller & Co. had intended thereby to prefer the Banque de Mulhouse

to their other creditors. That was true, not only at the time when Messrs. Steele, Miller & Co. delivered to the Compagnie Generale Transatlantique the cotton covered by the said custody bills; that delivery has moreover been done by Steele, Miller & Co., without the knowledge of the Banque de Mulhouse. But it was also true at the time when Messrs. Steele, Miller & Co., sent, also without the knowledge of the Banque de Mulhouse, the said custody bills to Havre.

It was always true at the dates of the 3rd and 7th May, 1910, when the said custody bills of lading were delivered into the material and physical possession of the Banque de Mulhouse. The Banque de Mulhouse has never indeed known nor suspected, nor has it even had occasion to know or suspect, that Messrs. Steele, Miller & Co., intended to give preference to it, by these bills of lading, to the prejudice of its creditors, as the matter refers to custody bills appertaining to the same number of bales with the same marks and numbers as the through bills of lading detained by the bank, and that Messrs. Steele, Miller & Co., for several months
976 had delivered to the bank, over and over again, custody bills corresponding in the like manner as to numbers and marks of bales with the through bills attached to the documentary drafts that it had accepted. The Banque de Mulhouse has not considered even at the dates of the 3rd and 7th May, 1910 (the only period of the three periods at which it knew the financial situation of Messrs. Steele, Miller & Co.), that it was possible it could be a competition of other creditors of Messrs. Steele, Miller & Co., for those same goods which it considered as its property since its acceptances.

Interrogatory No. 24:

When the Bank of Mulhouse received the said custody bills of lading did it know or believe that it was thereby receiving an interest or right in or to the cotton purporting to be covered thereby in addition to what it believed it already had as the acceptor of the said nine drafts and the holder of the said bills of lading attached thereto?

To the twenty-fourth interrogatory he saith:

When the Banque de Mulhouse received the said custody bills of lading it did not know or believe that it was thereby receiving an interest or right in or over the cotton purporting

to be covered thereby in addition to what it believed it already had in virtue of its acceptance of the nine drafts and as to the holder of the said through bills of lading attached thereto.

The Banque de Mulhouse has not seen in the delivery of the custody bills of lading, anything else than the consequence of the bank operation, consisting, for its part, of the acceptance of the documentary drafts of Steele, Miller & Co. against the 900 bales of cotton. These circumstances occurred very often since the month of December, 1909.

Interrogatory No. 25:

Please state fully and in detail the extent and nature of the knowledge or information of the Bank of Mulhouse as to the solvency or insolvency of Steele, Miller and Company at the time it accepted said nine drafts, at the dates of said custody bills of lading and at the dates when the same
977 came into the actual physical possession of said bank.

Give the nature, extent and sources of the bank's information on the subject from day to day from the date of the reported failure of Knight, Yancey and Company.

If, in answer to previous question, you state that on April 29th, 1910, a cable was received by Scheuch and Company from Steele, Miller and Company announcing that the latter had suspended payment, state what knowledge or information the said bank then had as to the assets or liabilities of Steele, Miller and Company or as to their sufficiency of their property at a fair valuation to pay their debts.

To the twenty-fifth interrogatory he saith:

When the Banque de Mulhouse accepted the nine drafts against the documents concerning the 900 bales of cotton above stated, that is to say, at the dates of 10th January, 1910, 2d and 8th February, 1910, the Banque de Mulhouse was absolutely ignorant of the regretable financial situation of the firm of Steele, Miller & Co. It had on the contrary the greatest confidence in its complet [complete] solvency. The same circumstances existed at the dates of 19th, 20th, 21st, 23d and 25th April, 1910, which are the dates of the said custody bills of lading. On the contrary, when on the 3rd and 7th May, 1910, the said custody bills were delivered by Scheuch & Co. into the actual possession of the Banque de Mulhouse the bank knew, since the 29th April that Messrs.

Steele, Miller & Co. had stopped payments of their accounts. I deny positively and absolutely that the Banque de Mulhouse, its manager or its agents knew or had any reason to believe that Steele, Miller & Co. were insolvent, at the time of the acceptance of the said drafts, or at the time of the shipment of the 900 bales of cotton, or at any time till the day when the news of their suspension of payments was heard at Havre in the circumstances detailed below.

The 20th April, 1910, the news arrived at Liverpool that Knight, Yancey & Co. were in financial difficulties and that was known in Havre as to the difficulties of Steele, Miller & Co. up to Saturday, 23rd of April, when Scheuch & Co. received from Bremen a telegram to inform them
978 that a bank of that town refused to accept the drafts of Steele, Miller & Co., and they hastened to communicate the news to the Bank of Mulhouse, adding that the refusal of this bank of Bremen was a precautionary measure in view of the frauds of Knight, Yancey & Co.; but they had no knowledge that Steele, Miller & Co. had done anything in the same way. We asked Scheuch & Co. to send a cable to Steele, Miller & Co. to ask for information on the subject. The next thing that happened was that a Havre firm received from New Orleans the evening of the 26th April a cablegram informing them of the failure of Steele, Miller & Co., but the next day that firm received another cable from the same correspondent requesting them to keep confidential the information of the cablegram of the previous day, the fact being not confirmed. At last, the 29th of April, Scheuch & Co. received from Steele, Miller & Co. an advice by cablegram to inform them they had suspended their payments. The above details constitute all the information that the Banque de Mulhouse, or its manager, or its agents had received at a prior date to the 7th May, 1910, relating to the insolvency or the suspension of payments of Steele, Miller & Co.

The Banque de Mulhouse had not at that time any knowledge nor any report as to the assets or liabilities of Steele, Miller & Co.

Interrogatory No. 26:

If, in answer to previous interrogatories, you have stated that the bank believed that the custody bills of lading represented the same cotton which had been paid for by the accept-

ance of the said nine drafts, and which the bank was entitled to receive, state what effect, if any, knowledge of the insolvency of Steele, Miller and Company by the bank at the date of said custody bills of lading or at the date when they came into the physical possession of the bank would have had upon the belief of the bank that it was receiving only cotton to which it was entitled.

To the twenty-sixth interrogatory he saith:

It is a natural consequence of my preceding answer that the Bank of Mulhouse had no knowledge of the insolvency of Steele, Miller & Co. on the dates inscribed as dates on the custody bills of lading, that is to say, the 19, 20, 21,
979 23 and 25th April, 1910; but if we knew their suspension of payments at the dates of the 3rd and 7th May, 1910, when the custody bills were given in the physical possession of the Banque de Mulhouse, that knowledge produced no effect at all upon the perfect confidence in the force of our rights over the 900 bales of cotton, resulting from the acceptances of the drafts with the attached through bills of lading appertaining to those goods, for the Banque de Mulhouse considered that the custody bills of lading represented the same cotton which had been paid for by the acceptance of the said nine documentary drafts, and it believed the bank only was entitled by right of possession to receive the said 900 bales when they arrived at Havre.

The only effect the knowledge of the suspension of payments of Steele, Miller & Co. had upon us was to decide us to keep the through bills of lading appertaining to those 900 bales which till that time on similar occasions we had given back to Messrs. Scheuch & Co. to be sent back to Steele, Miller & Co.

Everybody will understand that a firm which suspends its payments is not in a position to give the same guarantees as a firm "in bonis." This reason explains sufficiently that the Banque de Mulhouse would rather have kept the two documents, through bills and custody bills of lading appertaining to the goods which were belonging to it and over which Steele, Miller & Co. could not lay claim to any right.

Interrogatory No. 27:

State, if you know, the financial condition of Scheuch and

Company and the individual members of said firm, and how long they have been in such financial condition.

To the twenty-seventh interrogatory he saith:

In 1909 Scheuch & Co. have shown to me their balance-sheet, which at that time gave to their firm a capital of fr. 720,000.—(seven hundred and twenty thousand of francs).

It was a matter of common knowledge in Havre that they have started with a very small capital, but by their
980 constant work they had reached to this financial position.

On this point I refer you to my replies to the interrogatories No. 5 and 6. Naturally, in 1910, the failure of Steele, Miller & Co. resulted in a considerable prejudice to Scheuch & Co.

First of all, the non-delivery of 1550 bales of cotton by Steele, Miller & Co., representing a sum of about fr. 600,000.—was a great blow for the firm of Scheuch & Co., and at once swamped the greater part of their capital. Besides this, it is evident that Scheuch & Co. will be in a condition of absolute incapability of repaying their bankers in full if the "Texas" cotton is in the long run detained in the United States.

Interrogatory No. 28:

There has been offered in evidence on behalf of the complainant in this cause a copy of a publication at Havre called the Bulletin de Correspondence, of date April 27, 1910, which contains the following:

"Nous avons parle, hier, d'une nouvelle faillite aux Estats-Unis. A ce propos, on a recu, de Liverpool, le telegramme suivant: Plusieurs Maisons de coton seraient atteintes par la faillite de la Maison Steele, Miller and Co. de Memphis, qui faisait de nombreuses affairs avec l'Europe."

And a copy of the same publication, dated April 28, 1910, which contains the following:

"Cette semaine, les marches ont ete influences par deux sortes d'evenments. En premier leiu, on a appris la faillite de deux Maisons d'exportation des Estats-Unis; si les detailes

donnes ne pouvaient que semer la mefiance et, par suite, amoner un ratentissiment des affaires, par contre, ils devaient contribuer au raffermissement de cours, puisqu'ils indiqaient law possibilite de ne pas etre livre de coton achete, du moins dans les delais prevus. Il est a esperer, d'ailleurs, qu'l y a de l'exageration dans toutes les rumeurs mises en circulation et que ce qui vient de se passer aura surtout pour resultat de faire rechercher les moyens qui assureront une plus grande securite a ceux qui doivent importer du coton."

Please state whether the quoted paragraphs from said paper or either of them was read or known at the time by you or any representative of the Bank of Mulhouse. Please state, if you know, any reports or information which came to you or the Bank of Mulhouse at the time of said publication which tended to confirm or to discredit or cast doubt upon the correctness of the statements in said quoted paragraphs.

To the twenty-eighth interrogatory he saith:

981 The "Bulletin de Correspondance" appears every day at 6 h. 30' p.m.; I have heretofore read the 28th of April, 1910, the quoted paragraph published in the number of the 27th April, but I did not attach to it more importance than it was worth, that paper reproducing indistinctly all telegrams of various origins coming from the United States and likely to interest the Havre market, but without any pretense of vouching for accuracy of them.

These informations are often to be read with caution and this publication takes its principal importance from the fact that it publishes the Havre market official prices. On the other hand, the information published in the number of the 28th April, 1910, which came to our knowledge the next day, the 29th of April, did not surprise us, for the same day, Messrs. Scheuch & Co. came to communicate to us the cablegram by which Steele, Miller & Co. advised them of their suspension of payments. I say again that we have not had at the time of that publication any other informations concerning the firm of Steele, Miller & Co., than those which I have indicated in my answer to the above interrogatory No. 26.

Interrogatory No. 29:

There has been offered in evidence on behalf of the complainant in this cause a copy of a publication called the Liverpool Daily Post and Liverpool Mercury of date April 27th, 1910, which begins with the following head-lines:

"Cotton Market Outlook,
Another American Firm
Suspends Payment
Disturbing Succession of
Unsettling news
The Knight, Yancey Position
Losses smaller than originally feared."

and the first paragraph is as follows:

"The Liverpool cotton market has received further shocks to-day, first, by the alarming reports of new crop damage from frost, which many of the morning papers treated in 'scare' fashion; and later by the statement that another American firm, Messrs. Steele, Miller and Co. of Memphis,
982 had suspended payment. Liverpool we understand is not largely affected by the failure, the losses falling chiefly on Bremen importers."

Please state whether the above article from said paper was read or known at the time by you or any representative of the Bank of Mulhouse. Did you or any representative of the said bank receive any reports or information about the time of said publication which tended to confirm or to discredit and cast doubt upon the correctness of the statements in said quoted paragraphs? If so, state, if you have not already done so, what were said reports or information.

To the twenty-ninth interrogatory he saith:

Neither I nor any representative of the Banque de Mulhouse had read or known, at that time, the article quoted published in the "Liverpool Daily Post & Liverpool Mercury" on the date of the 27th April, 1910, and even at this present time it is actually unknown to us except from the quotation made during this case.

Interrogatory No. 30:

Has the Bank of Mulhouse any available means to be reim-

bursed or paid the drafts against said 900 bales of cotton, except through the sale of the said cotton in controversy in this suit?

To the thirteenth interrogatory he saith:

The Banque de Mulhouse has not any available means of being reimbursed or paid for the drafts against said 900 bales of cotton, except through the sale of the said 900 bales of cotton, the subject of this law suit. The bank is absolutely without security for the amount of the said drafts. Messrs. Scheuch & Co., are in fact unable to pay what they owe in consequence of the failure of Messrs. Steele, Miller & Co., who have failed in their obligation to deliver the cotton.

Consequently the Banque de Mulhouse could receive from Messrs. Scheuch & Co. only a small dividend quite insufficient to reimburse the bank for the amount advanced resulting of the acceptance of the said documentary drafts, the subject of this law suit.

983 Interrogatory No. 31:

Were any efforts made to have your bank increase its engagements d'importation with Scheuch and Company in respect to shipments of cotton by Steele, Miller and Company? If so, state when and by whom such efforts were made and what was the nature of such efforts.

To the thirty-first interrogatory he saith:

Mr. Linde when he came to Havre at the end of March, 1910, made efforts to obtain from the Banque de Mulhouse an increase in the engagements which he had already with Scheuch & Co. in respect to shipments of cotton by Steele, Miller, & Co.

These are the circumstances:

Mr. Linde alluding to the drafts against the 3,100 bales of cotton which the Banque de Mulhouse had accepted for the account of the Cotton Commission Company of Bremen, with the Scheuch & Co.'s full guarantee, asked me if, (as the Banque de Mulhouse could not for the moment open new credits for the firm of Scheuch & Co. whose credit had reached the limit, and inasmuch as the greater part of the 3,100 bales of cotton imported for the account of the Cotton Commission Co. had arrived at Bremen), the Banque de Mulhouse would

not be disposed to give its acceptance for another importation of 1,000 bales of cotton for the account of the Cotton Commission Co., with the full guarantee of Messrs. Scheuch & Co. as in the preceding affair.

I replied such a thing was impossible and that I would talk about it with Messrs, Scheuch & Co., which I did in the days which followed.

My recollection of this is very clear and enables me to affirm that Messrs. Scheuch or Schilling, or both of them, to whom I talked in regard to the matter, told me that their engagements were already great enough, and that till they were relieved by the arrival and the sale of a good part of the cotton expected, they were disinclined to enter into any engagements for further imports.

Interrogatory No. 32:

Do you know, or can you set forth, any other matter or thing which may be a benefit or advantage to the
984 parties at issue in this cause, or either of them, or that may be material to the subject of this your examination or the matters in question in this cause? If yea, set forth the same fully and at large in your answer.

To the thirty-second interrogatory he saith:

Mr. Linde has declared in his interrogatory before the Court of New Orleans while referring to a telegram or statement of which I am ignorant that Scheuch & Co., about the 29th of April, 1910, had taken up 1,550 bales of cotton comprising the 350 bales of cotton of the Banque de Mulhouse which were never reshipped by Steele, Miller & Co.

I think it is important to declare in direct opposition to this assertion of Mr. Linde that the Banque de Mulhouse never received from Messrs. Scheuch & Co. payment of the drafts corresponding to these 350 bales of cotton and that Messrs. Scheuch & Co. never came to propose to the Banque de Mulhouse that they should take up the documents relating to those bales.

I wish also to call your attention to the testimony before the Court of New Orleans of Messrs. Hendren, Fulton, Janvier, Butler.

These honorable gentlemen came and declared before the Court, with great certainty, that the existence at the same

time for the same goods of a through bill of lading and of a port bill or custody bill, both negotiable instruments, implied of necessity a fraud, and that they would not have been satisfied by the explanations, which were furnished to us by Messrs. Scheuch & Co. on behalf of Messrs. Steele, Milller & Co.

I have already said in my reply to question No. 21 of the present interrogatory that the explanations which we asked for on that occasion appeared quite plausible to the French banks which, not being present in person on the spot, in the United States, were not "au courant" with all the details of the conditions in which the cotton is transported in the United States. Without going back to this again, I wish simply to annex here as exhibit No. 13 & 14:

985

1o—The photograph of an export bill of lading (accompanied by a validation certificate and a letter of guarantee from the American National Bank of Austin, Texas) referring to 100 bales of cotton marked C S A N, issued on the 26th August, 1911, by the Houston and Texas Central Railroad Co. at Austin, which document was attached to a draft drawn on the bank for a sum of frs. 34,204.90 on account of one of our Havre clients.....a draft which the Banque de Mulhouse has accepted.

This export bill bore on the back of it the indorsement in blank of the exporters and constituted in this way a perfectly negotiable title to the goods.

This export bill bore also the mention that these 100 bales of cotton were to be transported to Galveston and thence by steamer "Penrith Castle" to the Port of Havre.

The steamer "Penrith Castle" arrived at Havre the 22th [nd] of September and brought with it only eight bales out of these hundred bales. These eight bales were delivered to us the 23rd September according to the certificate of the consignees of the vessel Messrs. Langstaff Ehrenberg & Pollak.

2o. The photograph of a through port bill of lading issued at Galveston the 5th of September, 1911, by the Southern Pacific Co. Atlantic Steamship Lines declaring the shipment of the 92 bales of cotton C S A N the balance of the 100 bales of cotton mentioned above with the indication that they

would be transported from Galveston to New York by the steamer "El Rio" and thence by French Line to Havre.

This bill of lading bore also on the back of it the indorsement in blank of the same exporter, who had already indorsed the above mentioned export bill of the 100 bales of
986 cotton and constituted in this way also a perfectly negotiable title to the same goods.

These 92 bales of cotton arrived at Havre the 1st of October, 1911, by the steamer "Mexico" and were delivered to us the 2nd October, 1911, by the "Compagnie Generale Transatlantique" on the presentation of the bill of lading issued by the Southern Pacific Co. Atlantic Steamship Lines.

In both these bills of lading and photographs of which (duly certified by the consul) I exhibit, the names both of the exporters and of our clients to be notified, have been purposely hidden by paper on the bills before the photographs were taken. This has been done by reason of the natural and proper secrecy and discretion which should always characterize the relations of a banker with his client.

The explanations which we obtained from the Havre agent of the exporter in question, who is well known as being a perfectly honest man prove that in that affair there was no fraud.

This example therefore proves in the most peremptory fashion that the above named honorable witnesses have been extremely imprudent to go as far as they have done in their deposition and that they themselves cannot be thoroughly conversant with all that not only can go on but also does go on in the United States, their own country, and also (a fact which is clearly shown by the production of these two documents of recent date) two different bills of lading both equally negotiable, issued one after the other for the same goods, can perfectly well exist without any kind of fraud whatever.

987 Cross-Examination of FRANK LYZELL.

First cross-interrogatory:

Please state whether the Bank de Mulhouse has an agent within the City of New Orleans, State [of] Louisiana, or within the Eastern District of Louisiana.

To the first cross-interrogatory he saith:

The Bank de Mulhouse has no agent or representative in the City of New Orleans, (State of Louisiana), nor in the Eastern District of Louisiana.

Second cross-interragtory:

State if your authorizations to Scheuch & Company to have drafts drawn on the Bank de Mulhouse by Sceuch & Company's American customers was in any way different from the ordinary and customary method prevailing in Europe by which banks accept drafts, retaining possession of the documents until the acceptances have been discharged.

To the second cross-interrogatory he saith:

The authority which the Banque de Mulhouse gave to Scheuch & Co. to have documentary drafts drawn on the bank by the American cotton exporters with whom Scheuch & Co. had business relations, was similar to the authorities to which European banks usually consent to their clients for the importations of American cotton.

The Banque de Mulhouse after having accepted the drafts has the invariable custom to remain in possession of the documents or of the goods when arrived until the Bank is reimbursed for the drafts accepted by it.

Third cross-interrogatory:

State if the Bank de Mulhouse ever had at any time any relations or dealings with Steele, Miller & Company by which the said Bank de Mulhouse purchased from Steele, Miller & Company any cotton, and state particularly if you
988 purchased from Steele, Miller & Company the nine hundred bales of cotton marked R D A R, R U R A, Q A T R, R D A K, R D T N, R D H O, R B S A, R J K S, Q A A R.

To the third cross-interrogatory he saith:

The Banque de Mulhouse has never had at any time relations or dealings with Steele, Miller & Co. and has never purchased from Steele, Miller & Co. any cotton. Particularly it has not purchased from them the nine hundred bales of cotton marked R D A R, R U R A, Q A T R, R D A K, R D T N, R D H O, R B S A, R J K S, Q A A R.

The Banque de Mulhouse accepted the documentary drafts of Steele, Miller & Co. for the account of Scheuch & Co. and by virtue of the arrangements made between the Bank and Scheuch & Co.; Steele, Miller & Co. had, as drawers of the said drafts, the obligation towards the Banque de Mulhouse, to ship the cotton against which Steele, Miller & Co. had made a draft on the Banque de Mulhouse.

Fourth cross-interrogatory:

If you answer that you did make a direct purchase of this cotton from Steele, Miller & Company, state whether or not the negotiations for the purchase were verbal or in writing, and if you answer that they were verbal, you will state the date or dates on which these negotiations took place, and with whom and in the presence of whom; and if you should answer that the contract was in writing, you will annex to these interrogatories copies of any agreements and all correspondence leading up thereto, and you will permit the authority taking these depositions to examine the original documents and papers and verify your statements, certifying that same are correct.

To the fourth cross-interrogatory he saith:

This interrogatory does not admit of any answer, for the Banque de Mulhouse has never purchased any cotton from Steele, Miller & Co.

Fifth cross-interrogatory:

989 Please state whether it was and is your custom to purchase cotton in the American market for your own account, or whether or not your business, insofar as cotton is concerned, is confined to the accepting of drafts for account of your own customers.

To the fifth cross-interrogatory he saith:

I affirm that the Banque de Mulhouse, Havre agency, has never purchased a bale of cotton for its own account, in the American market or elsewhere. We are bankers only bankers. Our business in so far as cotton is concerned, is confined as bankers, to the acceptance (with a commission of acceptance for the account of the importation firms of Havre, which

are our own customers) of the drafts drawn upon us against the goods imported.

Sixth cross-interrogatory:

State whether or not you charge a commission for accepting drafts, and whether the same is not the usual and customary commission charged by foreign banks, and attach to your depositions a statement showing the commissions charged by you on the acceptances for account of Scheuch & Company of the drafts drawn by Steele, Miller & Company.

To the sixth cross-interrogatory he saith:

The commission charged by the Banque de Mulhouse for acceptance of documentary drafts of Steele, Miller & Co. was the usual commission charged by the French bankers. You can see this by the statements attached to this deposition as exhibits No. 5-6-7.

Our commission charged for the acceptance, for account of Messrs. Scheuch & Co. of drafts drawn by Steele, Miller & Co., has been either 1/4%, or 3/16%. Besides the said commission of acceptance, the Banque de Mulhouse received a commission of fr. 2.50 by contract of sale of futures registered in the Caisse de Liquidation du Havre, in its name and monthly, during the continuance of the transaction, till its settlement. Those securities of futures are the usual practices of the Havre bankers who accept documentary drafts for shipments of cotton and that, as special guarantee against the
990 eventual fluctuations in the market.

Seventh cross-interrogatory:

File with your deposition a copy of the account of Scheuch & Company with your house from September 1, 1909, to date. Permit the notary to examine the original books and papers showing the account so as to verify your statements as being correct.

To the seventh cross-interrogatory he saith:

I annex to this deposition a copy of the accounts of Scheuch & Co. with the Banque du Mulhouse, since the 1st of September, 1909, till this day, as exhibit No. 4.

The accuracy of the present copy has been verified by the consul.

Eighth cross-interrogatory:

What drafts of Steele, Miller & Company had you accepted under your arrangement with Scheuch & Company previous to September 1, 1909. Attach to your depositions a statement of the drafts, the marks of the cotton supposed to have been secured by bills of lading, the dates the said drafts were drawn and the dates the said drafts were paid; and state particularly whether or not they were paid by you by the sale of the cotton, and if so, attach to these depositions a statement showing the disposition of the cotton, to whom sold and how the proceeds were applied.

To the eighth cross-interrogatory he saith:

Before the 1st of September, 1909, the Banque de Mulhouse Epinal branch office, accepted for the account of Scheuch & Co. drafts against 6,200 bales of cotton drawn by Steele, Miller & Co. and indicated in the list which I annex to my deposition as exhibit No. 5.

These accounts have been transferred to our agency of Havre the 17th August, 1909. The list annexed as exhibit No. 5 gives the indications of the amounts of the said drafts of Steele, Miller & Co., the dates on which they have been drawn by Steele, Miller & Co. and paid by us, the marks of cotton presumed to be secured by the bills of lading
991 attached to the drafts.

The Banque de Mulhouse has been reimbursed for the amount of these drafts by payments in cash which have been made into its hands by Messrs. Scheuch & Co. and the 6,200 bales of cotton which form the object of those drafts have been taken up by Messrs. Scheuch & Co., who have sold them in whatever way and to whomsoever it seemed good to them, absolutely with the Banque de Mulhouse, which has remained personally without interfering in this realization of the goods and has been ignorant of the conditions of it.

Ninth cross-interrogatory:

Attach to these depositions a statement of drafts drawn by Steele, Miller & Company against your bank and accepted by you under your engagement d'importation from September 1, 1909, up to and including the last draft accepted previous to the bankruptcy proceedings, to-wit, May 4, 1910. Describe

each draft, describe the character of security attached, (bill of lading), give the date on which each draft was accepted and the date on which each was paid or discharged, and state particularly how discharged, and state whether the draft was paid by the sale of the cotton by your bank or by Scheuch & Company; and if you state the drafts were paid by the sale of the cotton by your bank then attach a statement showing the sale, to whom made and how the proceeds were applied.

To the ninth cross-interrogatory he saith:

I annex to this deposition as exhibit No. 6 the statement of the drafts drawn by Steele, Miller & Co. on the Banque de Mulhouse and accepted by the bank, from the 1st September, 1909, to the 14th February, 1910, date of the last drawing of Steele, Miller & Co., accepted by the Banque de Mulhouse before the 4th of May, 1910, date of the proceedings of the failure. The list indicates the character of the documents annexed to the drafts, (bills of lading), the dates on which every draft has been accepted by the Banque de Mulhouse and paid by it.

992 The Banque de Mulhouse has been reimbursed for the amount of the drafts above mentioned, by payments in cash, which have been made into its hands by Scheuch & Co., except for the drafts corresponding to the 900 bales of cotton shipped on the steamer "Texas," and so the 25,100 bales of cotton have been taken up (except the 900 bales shipped on the steamer "Texas") by Scheuch & Co., who have sold them in whatever way to whomsoever it seemed good to them, absolutely without the Banque de Mulhouse which has remained personally without interfering in this realization of the goods and has been ignorant of the conditions of it.

I think I must add to this deposition as exhibit No. 7 a second list, indicating the drafts of Steele, Miller & Co., accepted by the Banque de Mulhouse on account of the Cotton Commission Co. of Bremen, (with, the full and entire guarantee of Messrs. Scheuch & Co.), for 3,100 bales of cotton, the character of the annexed documents (bills of lading), the dates on which each of these drafts have been accepted by the Banque de Mulhouse and paid by it.

The Banque de Mulhouse has been reimbursed for the amount of the drafts above mentioned, by payments in cash which have been made into the hands of their correspondents in

Bremen, by the Cotton Commission Co., except for the drafts corresponding to the 350 bales of cotton not received, and the 3,100 bales of cotton, (less the 350 bales not received), have been taken up by the Cotton Commission Co. which has sold them in whatever way and to whomsoever it seemed good to them, absolutely without the Banque de Mulhouse which has remained personally without interfering in this realization of the goods and has been ignorant of the conditions of it.

Tenth cross-interrogatory:

To what extent is Scheuch & Company indebted to your bank at this time, and what security have you for any such indebtedness?

993 To the tenth interrogatory he saith:

As results from the copies of the account which we annex to the present deposition (as exhibit No. 4) in reply to question No. 7 of the present cross-interrogatory, the total amount of the actual debt of Scheuch & Co. to the Bank of Mulhouse reaches the sums of frs. 423,232, due 30th September, 1910, plus interest.

Our first claim amounted to frs. 685,965.60, but we deduct from this sum:

1st. The sums of frs. 81,158.60, produced by the realization of securities which Scheuch & Co. deposited with us as guarantee for their account current since their entry into relations with the Bank of Mulhouse and of various dividends produced by the same securities.

2ndly. The sum of frs. 181,575, which was paid to us by the Comptoir d'Escompte de Mulhouse for the account of Messrs. Scheuch & Co. by reason of distribution of their available assets.

The debt of Scheuch & Co. is therefore brought to the sum of frs. 423,232.

The Bank of Mulhouse is in the possession still by way of security for Scheuch & Co. of 250 shares in the establishment Wenedig at Vienna, but these shares are in an establishment of pleasure of Vienna which have paid no dividend for several years; the shares are not in the market anywhere

and are not in the least negotiable. It is therefore impossible to put upon them any realizable value, if indeed they have any, and to consider them as an effective guarantee of a part of the debt to us of Messrs. Scheuch & Co., and if I mention them, it is only to put it on record and to hide nothing.

As a consequence, as guarantee of the sum which Scheuch & Co. still owe us, the Bank of Mulhouse only possess in reality the documents relating to the nine hundred bales of cotton "Texas," the object of this law suit and to
994 the three hundred and fifty bales of cotton which never came to hand.

Eleventh cross-interrogatory:

Attach to your depositions a statement of your acceptances against American cotton during the season of 1909 and 1910, that is, beginning from September 1, 1909, and ending August 31, 1910. What was the total amount of drafts accepted by you during the cotton season of 1909 and 1910 against American cotton?

To the eleventh cross-interrogatory he saith:

During the season 1909-1910, that is, beginning from September 1st, 1909, and ending August 31st, 1910, the total amount of drafts accepted by the Banque de Mulhouse against American cotton was the sum of fr. 43,914,577.10 against 133,075 bales of cotton.

Twelfth cross-interrogatory:

When did you last accept any cotton drafts for account of Scheuch & Company drawn by Steele, Miller & Company, or Knight, Yancey & Company?

To the twelfth cross-interrogatory he saith:

The last draft accepted by the Banque de Mulhouse for the account of Messrs. Scheuch & Co. was a draft drawn by Steele, Miller & Co. and has been accepted the 14th February, 1910.

The Banque de Mulhouse has never accepted for account of Messrs. Scheuch & Co. drafts drawn by Knight, Yancey & Co.

Thirteenth cross-interrogatory:

Did you limit acceptances for Scheuch & Company? If

you state that you limited Scheuch & Company in the amount of acceptances for account, give your reason for not continuing to accept, and did you at the same time discontinue accepting cotton drafts for other houses?

To the thirteenth cross-interrogatory he saith:

The Banque de Mulhouse has limited its acceptances for Messrs. Scheuch & Co. as it did and does still now for all its clients. That limit had been stipulated at the
995 beginning of the cotton season and Scheuch & Co. have always observed it. It was only in the course of February, 1910, that Messrs. Scheuch & Co. asked us if they could cause more to be drawn against the Banque de Mulhouse for a few thousand bales. As their limit was completely attained, I answer them that it was absolutely necessary, of course, to wait till the situation was relieved to be able to authorize further drawings on the Banque de Mulhouse. It is not therefore an exact statement of fact that we stopped at that time to accept drawings for the account of Scheuch & Co. Their limit being reached, we had evidently to wait for a new margin between the amount drawn and the amount of credit authorized. We should have made the same answer for any of our customers whose limit had been reached, but that did not occur at that moment.

Fourteenth cross-interrogatory:

At the time of the failure of Knight, Yancey & Company had you accepted for account of Scheuch & Company, or any other party, drafts of Knight, Yancey & Company. If you answer yes, annex to your deposition a statement of each draft, together with a statement of the bills of lading attached to these drafts, and state whether or not these obligations have been paid and by whom, or whether or not you now hold same.

To the fourteenth cross-interrogatory he saith:

At the time of the failure of Knight, Yancey & Co. we had not in circulation any more drafts of that house accepted by us for the account of other customers than Scheuch & Co., and as to Scheuch & Co. the Banque de Mulhouse has never accepted for their account any draft drawn by Knight, Yancey & Co., as I said in my answer to the interrogatory No. 12:

Fifteenth cross-interrogatory:

Was your bank aware of the delay in the arrival of the cotton for which it had accepted drafts of Knight, Yancey & Company and Steele, Miller & Company?

996 To the fifteenth cross-interrogatory he saith:

Certainly we were aware of the delay in the arrival of the cotton for which we have accepted drafts of Steele, Miller & Co. But with my personal experience as attorney of the Comptoir d'Escompte de Mulhouse, I have known for 3 or 4 years that the cotton shipped by Knight, Yancey & Co. arrived always very late; this delay happened also for the cotton shipped against through bills by other exporters than Steele, Miller & Co. and Knight, Yancey & Co. That is why we found nothing suspicious in the fact the cotton shipped by Steele, Miller & Co. came to hand with a certain amount of delay.

Sixteenth cross-interrogatory:

If you answer yes to the fifteenth cross-interrogatory, state whether or not you made any complaint as to these delays to the steamship lines, and if you should answer yes, state whether the complaints were made verbally or in writing, and if you answer the complaint was made verbally, state to whom made and in the presence of whom, and if you answer the complaint was made in writing, annex to your deposition copies of the complaints, together with the replies you received, and submit the originals to the authority taking these depositions that he may compare them with the copies and certify the copies as being correct.

To the sixteenth cross-interrogatory he saith:

We have never made any complaint as to the delays in the arrival of the cotton to any steamship company.

Seventeenth cross-interrogatory:

During the latter part of January or the early part of February, 1910, did you not stop the line of credit extended to Scheuch & Company by way of acceptances? If you answer yes, state why you stopped said line of credit, and state whether or not you gave notice of this fact to Scheuch & Company. If you answer yes, state whether said notice was verbal

or in writing. If verbal, give the date or dates when given, to whom and in the presence of whom. If you gave such notice in writing attach to your depositions a copy of such notice or notices and submit the originals to the authority
997 taking these depositions, to the end that he may compare same with these copies and verify them as being correct.

To the seventeenth cross-interrogatory he saith:

As I have declared in my reply to the thirteenth cross-interrogatory, it was before the beginning of the cotton season 1909/1910, at the end of August, 1909, that the Banque de Mulhouse fixed for Messrs. Scheuch & Co. the amount of the number of bales, for which it authorized documentary drafts against it to be drawn by the American cotton exporters with whom they were in business relations.

The limit was at that time fixed to 5,000 bales of cotton by verbal arrangements. The only modification made before the failure of Steele, Miller & Co. consisted when, in the month of November, 1909, on the request of Scheuch & Co., we have, still by verbal arrangement, extended that limit from 5,000 bales to 10,000 bales of cotton and we never demanded or imposed any reduction to this last limit, neither at the end of January, nor at the beginning February, 1910, nor at any other time.

Eighteenth cross-interrogatory:

Under the direct interrogatory number twenty-one, you have been asked to explain the circumstances of your receipt of the custody bills of lading. In answering this interrogatory, you will annex all correspondence that you may have had with Scheuch & Company, or anyone else on the subject; you will state whether or not you made any inquiry of the Compagnie Generale Transatlantique as to how two sets of bills of lading for the same cotton could be in existence at the same time. If you state that you made inquiry of the Compagnie General Transatlantique, or any source other than Scheuch & Company, you will state whether this inquiry was verbal or in writing; if you answer verbal, state the date or dates when made, to whom the inquiry was addressed and in the presence of whom, and if you answer this inquiry was made in writing, you will attach to your deposition a copy of the communica-

tions written by you and received in reply, and you
998 will submit the originals to the authority taking these depositions to the end that he may compare them with the copies and certify the copies as being correct.

To the eighteenth cross-interrogatory he saith:

I have annexed to my reply to the direct interrogatory No. 21 as exhibit No. 2 & 3 all the correspondence that the Banque de Mulhouse has had with Scheuch & Co. on the subject of circumstances in which we received delivery of the custody bills of lading. This correspondence consists besides only in the advices of Scheuch & Co. addressed to us and which accompanied the delivery of the custody bills.

The Banque de Mulhouse has not received from anybody else any other correspondence on the same subject and has not addressed any letter to anybody on the same subject.

The Banque de Mulhouse has never made any inquiry of the Compagnie Generale Transatlantique or of any one of its agents or clarks [clerks], and has never made any inquiry of any other steamship line, neither verbally nor in writing, in any way in which it rendered it possible for there to exist in the same time two sets of bills of lading for the same cotton.

The only informations the Banque de Mulhouse has ever received on this point are these that Messrs. Scheuch & Co. have given verbally as a result of the letter addressed to them by Messrs. Steele, Miller & Co.

Nineteenth cross-interrogatory:

Under the eleventh cross-interrogatory, you have been asked to state the amount of business done by you in accepting cotton bills of lading in the season of 1909 and 1910. You will state at this time whether or not in any of these transactions you permitted the substitution of custody bills of lading for through bills of lading. If you answer that you did, you will give the names of the firms by which this substitution was performed, the dates of the drafts, the amounts of the drafts, the dates of the through bills of lading and the dates of the custody bills
of lading. We charge you that we are not discuss-
999 ing captains or mates receipts, but are asking solely, if in your experience with American cotton shippers other than Steele, Miller & Company any case has ever arisen by which port bills of lading and custody bills of lading were

in existence for the same cotton and at the same time that the original bills of lading were in your possession. You will answer this question fully, and as stated above, you will give the names of any American cotton houses by, with and through whom any such transactions occurred.

To the nineteenth cross-interrogatory he saith:

During the course of the cotton season of 1909/1910 we took delivery twenty-four times of custody bills of lading to be substituted for through bills of lading, as is shown by the advices of Scheuch & Co. annexed to our reply to the direct interrogatory No. 21, as exhibits No. 2 & 3.

Twentieth cross-interrogatory:

You have previously been asked whether or not you had any dealings with Knight, Yancey & Company and whether or not you held in your possession any accepted drafts of Knight, Yancey & Company about the time of the failure of Knight, Yancey & Company. If you answer yes, state whether or not when the failure of Knight, Yancey & Company was announced you made any inquiry concerning the cotton presumably covered by your bills of lading and if you answer that you did, attach to your depositions copies of the inquiries together with the replies thereto.

To the twentieth cross-interrogatory he saith:

The Banque de Mulhouse has never made any transaction with Knight, Yancey & Co. any more than with Steele, Miller & Co. or other firms of exportation of cotton or other articles. The Banque de Mulhouse has accepted several times drafts of Knight, Yancey & Co. for the account of several customers in Havre, but as I have declared already under the reply to cross-interrogatory No. 14, we had not in circulation, at the time of the failure of Knight, Yancey & Co. any
1000 draft of that firm accepted by us.

Twenty-first cross-interrogatory:

Did you or did you not know at the time of the failure of Knight, Yancey and Company that the said firm of Knight, Yancey & Company had carried on its business by forging bills of lading, and if you answer yes, state whether or not this was a matter of general knowledge at Havre at that time.

To the twenty-first cross-interrogatory he saith:

At the moment of the failure of Knight, Yancey & Co., we heard like everyone else about the rumors which were in currency, according to which it was said that that firm had made use of forging bills of lading, but, of course, it was quite impossible to us to assure ourselves of the accuracy of these rumors.

Twenty-second cross-interrogatory:

Did you have any conversation with C. H. G. Linde of Steele, Miller & Company between January and May, 1910, and if you say that you did, repeat this conversation?

To the twenty-second cross-interrogatory he saith:

I had a conversation with Mr. Linde in March, 1910; that is to say, the last time he came to Havre, probably about the 20th of March, in any case before Easter. I met him on 'Change one day, when he stopped me to ask me if it was true the Banque de Mulhouse had refused to Messrs. Scheuch & Co. to open them any new credit of reimbursement against new documentary drafts. I told him it was perfectly true, because the maximum limit of our engagements on account of Messrs. Scheuch & Co. was reached and that we could only accept new engagements as soon as the cotton expected against our prior acceptances had arrived at Havre.

On my informing him thus, he declared to me that this cotton should arrive at Havre in a few weeks, and he further went on to declare that it would come in the steamers "Virginia," "Stampican" and "Louisiane." I reply that as soon as we had received cotton the Banque de Mulhouse would be quite disposed to open new credits to Messrs. Scheuch & Co.
1001 for the same kind of transactions and it was then that he said to me that, to maintain the preponderance of his firm, he was obliged to purchase in the district 1,200 bales of cotton every week and he expressed the wish that the Board of Directors of the Banque de Mulhouse should be as liberable as possible on account of the importance of future business for the account of Messrs. Scheuch & Co.

Always in the same conversation of the end of March, 1910, Mr. Linde alluding to the drawings against the 3,100 bales of cotton that the Banque de Mulhouse had accepted on account of the Cotton Commission Co. of Bremen, with the guarantee

of Messrs. Scheuch & Co., asked me if (as the Banque de Mulhouse could not actually accept any new business for the firm of Scheuch & Co., whose credit had reached its limit, and as on the other hand, the greater part of the 3,100 bales of cotton imported on account of the Cotton Commission Co. had arrived) the Banquè de Mulhouse would not be disposed to accept a new importation of 1,000 bales of cotton on account of the Cotton Commission Co. of Bremen, with the guarantee as on previous occasions of Messrs. Scheuch & Co. I then answered that that perhaps might be done and that I would have an interview about it with Messrs. Scheuch & Co., as I did during the days which followed. My memory is very clear and allows me to affirm that Mr. Scheuch or Mr. Schilling or both to whom I spoke on the subject replied to me that their engagements were already great enough and that, until it was relieved by the arrival and the resale of a good part of the cotton, they were not disposed to enter into any new engagements for new importations.

Twenty-third cross-interrogatory:

File as an exhibit to your deposition all correspondence, telegraphic or otherwise, that passed between your bank and Scheuch & Company, and between your bank and any American firm or individual, between January and May, 1910, inclusive, with reference to the business of Steele, Miller & Company, or Knight, Yancey & Company. Attach as an exhibit all correspondence, telegraphic or otherwise, that passed between your bank and Scheuch & Company and the German American National Bank of New Orleans or A. Breton, its vice-president, or the Whitney Central National Bank of New Orleans, or the Canal-Louisiana Bank & Trust Company of New Orleans, or the Hibernia Bank & Trust Company of New Orleans, or any other bank or banker, between April 18, 1910, and May 15, 1910.

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To the twenty-third cross-interrogatory he saith:

I wish at first to protest against the really excessive character of the terms of this question which certainly exceeds the limits up to which it was possible to interrogate me as director of the Havre agency of the Banque de Mulhouse in the pending lawsuit. Having made this protest, I am in any case perfectly willing to reply.

I affirm that neither I nor the Banque de Mulhouse nor any clerk of the firm of which I am the director, has had any correspondence, telegraphic or otherwise, with Messrs. Scheuch & Co. or with American firms or persons, between January and May, 1910, inclu., concerning the business of Steele, Miller & Co. or Knight, Yancey & Co., except, of course, as regards Scheuch & Co. the ordinary exchange of debit and credit notes, notes of receipt of cheques, warrants, bills, etc., delivered to us, or their demands for delivery of cheques, warrants, bills, etc., which notes and demands are necessary in the ordinary and necessary course of business of a current account between banker and client, and which are invariably worded according to a stereotyped and usual form.

I nevertheless annex these documents of the account current as exhibit No. 8 & 9.

I recall to your memory that I have already annexed to my deposition as exhibit No. 2 & 3 the note of delivery
1003 of the custody bills.

Further there never existed between the 18th April, 1910, and the 15th May, 1910, any correspondence, telegraphic or otherwise, between the Banque de Mulhouse, myself or any clerk of the said bank, on the one hand, and on the other hand, Messrs. Scheuch & Co. or the German American National Bank of New Orleans or Mr. Breton, its vice-president, or the Whitney Central National Bank of New Orleans, or the Canal Louisiana Bank & Trust Co. of New Orleans, or the Hibernia Bank & Trust Co. of New Orleans.

The only correspondence we have had with the American banks or bankers between the 18th April and the 15th May, 1910, is that correspondence we have exchanged with the Hanover National Bank of New York.

Renewing my protest against inquiries so inquisitive as this, I annex this correspondence to the present deposition, as exhibit No. 10.

I think I ought to observe again as regards Scheuch & Co. that between the 18th of April and the 15th of May, 1910, we exchanged with Messrs. Scheuch & Co. with reference to other business than that of Steele, Miller & Co. the above mentioned documents of accounts in relation to the account current that the Banque de Mulhouse had with Messrs. Scheuch & Co., and so far as required, these documents form part of the Exhibit No. 8 & 9.

Twenty-fourth cross-interrogatory:

State whether or not you permitted Scheuch & Company to make a habit of swapping bills of lading in all transactions had between you, and state when for the first time you permitted the substitution of said bills of lading. When you have fixed the date of the first substitution, state what you did with the supposed original through bills of lading. Did you return them to Scheuch & Company, and if so, did you take
1004 a receipt or writing from Scheuch & Company, and if you answer yes, annex to your deposition a copy of any receipt or writing which you may have taken from Scheuch & Company.

To the twenty-fourth cross-interrogatory he saith:

It is absolutely inaccurate that we had to give and that we did give to Messrs. Scheuch & Co. the authority to acquire the habit of exchanging bills of lading in all the transactions they had with us.

The truth is only this, that on frequent occasions, since the month of December, 1909, and (for the first time the 22nd of December, 1909) they presented to us custody bills which they asked permission of us to exchange for the through bills of lading we had in our hands, for the quantities, numbers, and marks of bales exactly corresponding. Against the delivery to us by Messrs. Scheuch & Co. of the custody bills, we have always given back to them the through bills of lading in original and duplicate, except for the nine hundred bales "Texas," when for the reasons indicated in my reply to the question No. 26 of the direct interrogatory, the Banque de Mulhouse kept the through bills of lading, although we had received the corresponding custody bills.

When we gave back to Scheuch & Co. custody bills of lading we never asked them for any receipt or letter. The restitution was made from hand to hand, by the clark [clerk] at our grating into the hands of the clark [clerk] of the firm of Scheuch & Co., who brought the custody bills of lading, and the advices of Scheuch & Co. requesting the exchange. (We have annexed those advices to our reply to the direct interrogatory No. 21 as exhibit No. 2 & 3.

Twenty-fifth cross-interrogatory:

What other firm besides Steele, Miller & Company ever en-

gaged in this business of exchanging bills of lading
1005 for the same cotton or for any other article? State specifically the name of any firm or individual except Steele, Miller & Company which substituted bills of lading covering the same cotton without filing evidence of the fact that it was done by and with the consent of the transportation company.

To the twenty-fifth cross-interrogatory he saith:

We have no knowledge that any other firm than Steele, Miller & Co. have made a practice of this exchange of bills of lading, either in the case of cotton, or in the case of any other articles.

Messrs. Steele, Miller & Co., as we have said before in reply to the cross-interrogatory No. 24, did not make a practice of it, so far as we are concerned, before the 22nd December, 1909, and the reasons which were given to us to explain their change of proceeding, which we have explained at full length in our reply to the direct interrogatory No. 21, appeared to us, not only very satisfactory, but even appeared to us as rather an in ingenious idea of Steele, Miller & Co. to push on the shipment of their cotton.

Twenty-sixth cross-interrogatory:

State whether you permitted the swapping of bills of lading by Knight, Yancey & Company and what official of your bank permitted it to be done.

To the twenty-sixth cross-interrogatory he saith:

We never had occasion to permit the exchange of bills of lading for cotton shipped against drafts drawn on the Banque de Mulhouse by Knight, Yancey & Co. for the account of our customers.

Twenty-seventh cross-interrogatory:

State further what official of your bank permitted the substitution of bills of lading by Steele, Miller & Company. In answering this question, mention the exact transaction in which this proceeding took place.

To the twenty-seventh cross-interrogatory he saith:

It was myself, as director of the Havre agency of

1006 the Banque de Mulhouse, who consented to the exchange asked for by Scheuch & Co. of the through bills against custody bills of lading.

I have already entirely explained myself on that point in my reply to the direct interrogatory No. 21, to which I again refer you.

Twenty-eighth cross-interrogatory:

File as an exhibit to your deposition all correspondence, telegraphic or otherwise, which you had with the Compagnie Generale Transatlantique, between January 1, 1910, and June 30, 1910, touching movements of cotton by Steele, Miller & Company and Knight, Yancey & Company. Submit the originals to the authority taking these depositions that he may compare them with the copies and certify the copies as being correct.

To the twenty-eighth cross-interrogatory he saith:

I declare that the Banque de Mulhouse did not have with the "Compagnie Generale Transatlantique," or its agents in France or America, any correspondence, telegraphic or otherwise, regarding the cotton of Knight, Yancey & Co., nor regarding other cotton of Steele, Miller & Co., except regarding the 900 bales "Texas."

So far as concerns these 900 bales "Texas" I annex as exhibit No. 11 the letter of the 25th May, 1910, of the Banque de Mulhouse to the agent of the "Compagnie Generale Transatlantique" at Havre, as also, although the writ of a process-server does not constitute correspondence, the writ served by Mr. Guerard, process-server of Havre, by means of which, on the 9th of June, 1910, the Banque de Mulhouse, Mr. Paul Chardin, the Comptoir d'Escompte de Mulhouse and the Credit Havrais began an action before the Tribunal of Commerce of Havre against the Compagnie Generale Transatlantique on account of the disembarcation from the "Texas" of the 2094 B/C on which they were interested.

1007 Twenty-ninth cross-interrogatory:

Give the date that you exchanged the bill of lading attached to the draft accepted by you for the nine hundred bales of cotton, R D A R, R U R A, Q A T R, R D A K, R D T N, R B S A, R J K S, Q A A R, for the custody bill

of lading; give the hour of the day, the name of the individual who delivered the bill of lading and a copy of the entry made on your books of this transaction. Permit the authority taking these depositions to examine the original books, to the end that he may compare them with the copy and certify the copy as being correct. State whether or not you still hold both the through bill of lading and the custody bill of lading. If you answer that you do, state whether at the time of previous exchanges you surrendered the through bills of lading and if you answer yes, explain why you considered it necessary to retain both original and through bill of lading at this particular time.

To the twenty-ninth cross-interrogatory he saith:

The custody bills of lading for the 900 bales cotton in question were delivered to the Banque de Mulhouse by the firm of Scheuch & Co. on the following dates, that is to say:

for the 100 bales of cotton marked RDHO the 3rd of May, 1910,
for the 100 bales of cotton marked RDAK the 3rd of May, 1910,
for the 100 bales of cotton marked QAAR the 3rd of May, 1910,
for the 100 bales of cotton marked RJKS the 7th of May, 1910,
for the 100 bales of cotton marked RURA the 7th of May, 1910,
for the 100 bales of cotton marked QATR the 7th of May, 1910,
for the 100 bales of cotton marked RDAR the 7th of May, 1910,
for the 100 bales of cotton marked RDTN the 7th of May, 1910,
and for the 100 bales of cotton marked RBSA the 7th of May, 1910.

It is evident that it is absolutely impossible to indicate the hour of the day at which these 9 custody bills were delivered to us. As I replied to question No. 24 of the present cross-interrogatory, it was a clerk of the firm of Scheuch & Co. (whom I did not see personally, whom consequently I do not

know, and whose name it is therefore impossible for me to give), who brought these custody bills to the gratings
1008 of the Banque de Mulhouse.

Further, I cannot give a copy of the entry made on the books of the Banque de Mulhouse regarding this transaction, for it was never mentioned on the books of the said bank, not any more than were the previous deliveries of custody bills under the same conditions.

I beg you to refer back to my replies to number 24 of the present cross-interrogatory and the number 21 of the direct interrogatory concerning the conditions in which these deliveries of the custody bills were made. I cannot add anything more to this. I beg you too to refer back to what I have said in reply to number 26 of the cross-interrogatory, concerning the reason which caused us to keep in our possession the through bills of lading for the 900 bales of cotton along with the custody bills, instead of giving back the former, as we have done on previous occasions. I repeat that the Banque de Mulhouse has still actually in its hands the through bills of lading and the custody bills corresponding to those 900 bales of cotton.

Thirtieth cross-interrogatory:

Attach to your depositions a copy of the charter and by-laws of your corporation. It may be that you do not understand the words charter and by-laws. What we desire you to attach is a copy of the authority by which your corporation exists, together with the rules of business of your corporation.

To the thirtieth cross-interrogatory he saith:

I annex to my present reply a copy of the statutes of the Banque de Mulhouse, as exhibit No. 12.

Thirty-first cross-interrogatory:

Is it a custom of the banks doing business in France, and particularly your bank, to speculate in cotton, grain, sugar or other commodities?

To the thirty-first cross-interrogatory he saith:

It is not a custom of the French banks, nor of our bank particularly, to speculate in cotton, grain, sugar or other commodities.

1009 I do not suppose this question can be asked me in consequence of the credit of reimbursement which the Banque de Mulhouse has accorded to Messrs. Scheuch & Co. for importations of cotton covered by futures, for there is nothing at all in common between these latter transactions, which are perfectly characteristic banking transactions, and transactions of speculation.

I duly declare in the most formal possible manner that the agency of which I am the director is absolutely forbidden to speculate either on account of customers, or on its own account, and that it has never disobeyed this rule.

Thirty-second cross-interrogatory:

Are you acquainted with the following institutions: Paul Chardin, Comptoir d'Escompte de Mulhouse and Societe Generale?

To the thirty-second cross-interrogatory he saith:

I know well the following firms: Paul Chardin, Comptoir d'Escompte de Mulhouse, Societe Generale.

Thirty-third cross-interrogatory:

If you answer yes, state whether if you know it is a custom of all, or any of them, to speculate in cotton, grain, sugar, or other commodities by direct purchases from the American merchants and then protect these purchases by buying or selling cotton futures?

To the thirty-third cross-interrogatory he saith:

Except for Mr. Paul Chardin, whose firm is a cotton importer, who purchased cotton in the United States, and who can, if he likes to do it (that I do not know), enter into speculative transactions. I am quite sure that the Comptoir d'Escompte de Mulhouse and the Societe Generale do not purchase, any more than we do, cotton directly from American merchants and that it is quite as much forbidden to them as to us to enter into speculative transactions.

Thirty-fourth cross-interrogatory:

If so, state each and every case in which your bank has bought or sold cotton, sugar or grain.

To the thirty-fourth cross-interrogatory he saith:

Once more I declare that the Banque de Mulhouse has never purchased or sold, in America or anywhere
1010 else, cotton, sugar, or coffee to anybody.

Thirty-fifth cross-interrogatory:

If you answer that you purchased cotton on other commodities, state how many bales you have purchased in the last year; what facilities you have for receiving and storing said cotton. Give the name of the man or men in charge of your spot cotton department. Give the names of the parties from whom you have purchased cotton and the parties to whom you have sold cotton. Attach copies of all account sales and generally enlighten us as to the method of carrying out your cotton department.

To the thirty-fifth cross-interrogatory he saith:

The negative reply I have made to the previous question prevents me to reply to the present one.

Thirty-sixth cross-interrogatory:

If you say you purchased other commodities in the open market and sold same in the open market, give a full statement of these speculations.

To the thirty-sixth cross-interrogatory he saith:

No reply is necessary to this question, in consequence of my negative reply to the questions No. 31 and 34 of the present cross-interrogatory.

Thirty-seventh cross-interrogatory:

In the above styled cause you filed an affidavit in which you make oath as follows:

"When having established in August, 1909, in Havre the branch office, the Bank de Mulhouse commenced business with Scheuch & Company, that is to say, they authorized that firm to have drafts drawn on it for the purchase price of cotton accompanied by documents giving it title to the cotton, provided drafts drawn outstanding at any one time should not exceed 10,000 bales. The arrangement included the sale of futures in the name of the bank, contemporaneously with the

drawing of each draft and corresponding in amount and price with the cotton purchased. The bank has no concern with or knowledge of the contracts or arrangement between Scheuch & Company and the shippers of cotton, and extended no credit to the shippers."

Please state whether or not this statement is correct.

To the thirty-seventh cross-interrogatory he saith:

The statement you have extracted from the affidavit in question is perfectly accurate.

1011 Thirty-eighth cross-interrogatory:

Affidavits made by the witnesses for the Societe Generale, Paul Chardin, Comptoir d'Escompte de Mulhouse and yourself set forth the following statement:

"On April 20th it was reported in Liverpool that Knight, Yancey & Company were in difficulties, and this report was known at Havre on April 21, 1913. There was no report or rumor then in respect to Steele, Miller & Company. On Saturday evening, April 23rd, Scheuch & Co. received from Bremen a telegram stating that a bank of that city refused to accept drafts of Steele, Miller & Company, and they communicated this to the Bank de Mulhouse with the statement that the refusal of the Bremen house was as a matter of precaution, on account of the frauds of Knight, Yancey & Co., but without any knowledge that Steele, Miller & Company had acted in the same manner. We asked Scheuch & Company to cable Steele, Miller & Company for information. In the meantime, on April 26, there arrived the said custody bills of lading, and pending further information, we decided to hold both the custody bills of lading and the through railroad bills of lading. Afterwards, on the evening of April 26th, a house at Havre received from New Orleans a cable announcing the failure of Steele, Miller & Company, but the next day the house received a cable from the same correspondent telling it not to reveal the telegram of the day before, because it had not been confirmed. Finally, on April 29th, Scheuch & Company received from Steele, Miller & Company advice by cable that they had suspended."

Please state if this is correct.

To the thirty-eighth cross-interrogatory he saith:

The statement you have extracted from my affidavit is perfectly exact, except the following paragraph:

"In the meantime, on April 26th, there arrived the "said custody bills of lading and pending further informations we decided to hold both the custody bills of lading and the through bills of lading."

This paragraph does not appear in my affidavit.

Mr. Hendren has referred to his deposition before the court of New Orleans to an exchange of telegrams from the 25th to the 30th of April, 1910, between himself and Mr. Ducrot, Havre agent of the Compagnie Generale Transatlantique.

I am convinced by seeing the marks of the cotton indicated in these cablegrams, and I therefore declare that these telegrams refer to quite other cotton than that of the Banque de Mulhouse, and I declare that I never knew anything at all about the existence of this telegraphic correspondence until the day when I read the deposition of Mr. Hendren.

(Signed) J. P. BEECHER,
Commissioner.

[Seal]

(Signed) F. LYZELL.

1012 City of Havre,
Republic of France, ss.

I, J. P. Beecher, Vice Consul of the United States of America at Havre, France, do certify that Frans Lyzell, the witness, personally appeared before me on the 25th day of September, 1911, at 2 o'clock in the afternoon, at the consulate of the United States at Havre, in the Republic of France, and, after being duly sworn to testify the truth, the whole truth, and nothing but the truth, did depose to the matter contained in the foregoing deposition, and did, in my presence, subscribe the same and certify to the authenticity of the exhibits. I certify that I have subscribed my name to each half sheet thereof, and further certify that according to cable instructions sent to Messrs. Scheuch & Co. of Havre, France, on September 4, 1911, by J. P. Blair, attorney, the attestation of each exhibit has (in view of their great number) been waived.

Witness my hand and official seal, the day and year above written.

(Signed) J. P. BEECHER,
Vice Consul of the United States of America at Havre, France, & Commissioner.

Deposited in the post office at Havre, France, this 10th day of October, 1911.

(Signed) J. P. BEECHER,
[Seal] Vice Consul of the United States of America at Havre, France, & Commissioner.

[Twenty $2.50 American Consular Service Fee Stamps, stamped across face of each in red ink, 25 SEP 1911.]

Consular's fee $50.00
Services of clerk for copying the deposition..... 35.00

Total $85.00
Eighty-five dollars
(Signed) JOHN PRESTON BEECHER.

1013 United States District Court, Eastern District of Louisiana, New Orleans Division.

J. A. E. Pyle, Trustee,
vs. No. 14,240.
Texas Transport & Terminal Company, et als.

Evidence Made Part of the Deposition of Frans Lyzell, Being Exhibit No. 1, Offered on Behalf of the Bank of Mulhouse, One of the Defendants in the Above Numbered Cause, and Filed November 20th, 1911.

Ten Drafts—Being Part of the Said Exhibit No. 1.

Note: Transmitted, with this transcript, to the Honorable United States Circuit Court of Appeals for the Fifth Circuit, in accordance with the stipulation of counsel, copied at page 1335 of this transcript.

Note: Remainder of said Exhibit No. 1, being through bills of lading, custody bills of lading, insurance certificates and invoices, copied at page beginning 146 of this transcript.

1014 At the execution of a commission for the examination of witnesses in a case depending in the District Court of the United States for the Eastern District of Louisiana, wherein J. A. E. Pyle is complainant, and the Texas Transport and Terminal Company, et als., are defendants, this exhibit numbered 3 was produced and sworn to by Frans Lyzell, and subscribed by him at the time of his examination.

(Signed) JOHN PRESTON BEECHER,
[Seal] Vice Consul of the United States of America at Havre, France, and Commissioner.
(Sig.) F. LYZELL.

1015 EXHIBIT NO. 3.

Scheuch & Co.
Ferd. Scheuch, Albert Schilling.

Adresse Telegraphique, Scheuch-Havre.
Telephone 912.

Havre, December 22, 1909.

Bank of Mulhouse,
E/V.

Gentlemen:

We have the pleasure to transmit you inclosed port bill of lading for

Q. R. I. F. 100 B.
R. O. I. S. 100 B.
R. F. G. O. 100 B.
R. O. C. C. 100 B.
R. E. P. C. 100 B.

Requesting you to remit the through bill of ladings concerning these marks, which have to be returned to America:

Receive, gentlemen, our sincere salutation.

MENARD.

1016 Scheuch & Co.
Ferd. Scheuch, Albert Schilling.

Adresse Telegraphique, Scheuch-Havre.
Telephone 912.

Havre, December 28, 1909.

Bank of Mulhouse,
E/V.

Gentlemen:

Inclose we remit you "Port Bill of Lading" for R. T. U. F. 100 B. Requesting you to return us the "Through Bill of Lading" of this mark.

With our thanks, receive, gentlemen, our sincere salutations.

MENARD.

1017 Scheuch & Co., Havre.
Fred Scheuch, Albert Schilling.
A. C.

Havre, January 8th, 1910.

Bank of Mulhouse,
En Ville.

Gentlemen:

Inclose we remit you the port bill of lading for

R. O. C. O. 100 B.
R. Z. Z. X. 100
R. K. M. P. 100
Q. D. O. M. 100

for which please acknowledge receipt, and in return we beg you to remit the through bill of lading concerning these marks in order that we may return them to America.

Receive, gentlemen, our very sincere salutations.

MENARD.

1018 Memorandum Telephone 9,12.
of Scheuch & Co.,
25 de la Bourse Street.

Havre, January 13, 1910.

To M. Bank of Mulhouse,
E. V.

Gentlemen:

Inclosed we remit you bill of lading for

Q. B. I. Z. 100 B.

Q. O. D. E. 100 B.
Q. W. O. R. 100 B.
Q. W. A. T. 100 B.
R. I. E. O. 100 B.
R. I. S. B. 100 B.
R. E. F. D. 100 B.

Requesting you to return us the the through bill of ladings."
Receive, gentlemen, our sincere salutations.

per pro. SCHEUCH & CO.
GEO. FREBOURG.

1019 Memorandum Telephone 9,12.
of Scheuch & Co.,
25 De La Bourse Street.

Havre, January 17, 1910.

To M. Bank of Mulhouse,
E/V.

Gentlemen:

Inclose we remit you "Bill of Lading" for
R. A. E. M. 100 B.
R. T. O. Q. 100 B.
requesting you to return us the "Through Bill of Ladings."
Receive, gentlemen, our sincere salutations.

per pro. SCHEUCH & CO.
GEO. FREBOURG.

1020 Memorandum Telephone 9,12.
of Scheuch & Co.,
25 De La Bourse Street.

Havre, January 18, 1910.

To M. Bank of Mulhouse,
E/V.

Gentlemen:

Inclosed we remit you bill of lading for
G. R. O. R. 100 B.
R. U. K. T. 100 B.
Q. O. Z. T. 100 B.

R. I. X. R. 100 B.
R. A. E. S. 100 B.
R. N. E. A. 100 B.
requesting you to return us the "Through Bill of Ladings."
Receive, gentlemen, our sincere salutations.

per pro. SCHEUCH & CO.
GEO. FREBOURG.

1021 Memorandum Telephone 9,12.
of Scheuch & Co.,
25 De La Bourse Street.

Havre, January 24, 1910.

To M. Bank of Mulhouse,
E/V.

Gentlemen:
Inclose we remit you "Bill of Lading" for
R. U. W. Q. 100 B. cotton
requesting you to return us the "Through Bill of Ladings."
Receive, gentlemen, our sincere salutations.

per pro. SCHEUCH & CO.
GEO. FREBOURG.

1022 Memorandum Telephone 9,12.
of Scheuch & Co.,
25 De La Bourse Street.

Havre, February 2, 1910.

To Messieurs Bank of Mulhouse,
Je/K. E/V.
Gentlemen:
Inclose we remit you "Bills of Lading" for
Q. M. O. J. 1/100
R. Y. L. T. 1/100
requesting you to return to us the "Through Bill of Lading."
Accept, gentlemen, our sincere salutations.

SCHEUCH & CO.

1023 Scheuch & Co., Havre.
Ferd. Scheuch, Albert Schilling.
February 7, 1910.

Messieurs Bank of Mulhouse,
E/V.

Gentlemen:

We are remitting inclosed "Bill of Lading" for
S. N. T. Z. 100 bales cotton
Q. E. V. S. 100 bales cotton
R. H. V. I. 100 bales cotton
R. O. N. E. 100 bales cotton
S. T. O. N. 100 bales cotton
R. N. T. O. 100 bales cotton
R. B. U. G. 100 bales cotton

Requesting you to return to us the "Through Bill of Lading."

Accept, gentlemen, our sincere salutation.

SCHEUCH & CO.

1024 Memorandum Telephone 9,12.
of Scheuch & Co.,
25 De La Bourse Street.
Havre, February 24, 1910.

To Messieurs Bank of Mulhouse,
E/V.

Gentlemen:

We are remitting inclosed bill of lading for
S. A. P. O. 100 bales
requesting you to return us through bill of lading.

Receive, gentlemen, our sincere salutations.

SCHEUCH & C.,
Per J. KARSER.

1025 Memorandum Telephone 9,12.
of Scheuch & Co.,
25 De La Bourse Street.
Havre, March 7th, 1910.

To Messieurs Bank of Mulhouse,
E/V.

Gentlemen:

We are remitting inclosed bill of lading for
S. S. R. G. 100 bales

R. S. O. S. 100 bales
Q. A. V. I. 100 bales
requesting you to return to us the through bill of lading.
Accept, gentlemen, our sincere salutations.

SCHEUCH & CO.

1026 Memorandum Telephone 9,12.
of Scheuch & Co.,
25 De La Bourse Stret.
Havre, March 10, 1910.

To Messieurs Bank of Mulhouse,
E/V.

Gentlemen:
Inclose we remit you port bill of lading for
R. A. H. C. 100 bales
requesting you to return us the through bills of lading.
Accept, gentlemen, our sincere salutations.
Je/K. SCHEUCH & CO.

1027 Memorandum Telephone 9,12.
of Scheuch & Co.,
25 De La Bourse Street.
Havre, March 11, 1910.

To Messieurs Bank of Mulhouse,
E/V.

Gentlemen:
Inclosed we remit you agent's receipt of Messieurs Steele, Miller & Co., Corinth, Miss.
R. P. I. D. bales by s/s Memphian
and requesting that you acknowledge receipt.
Accept, gentlemen, our sincere salutations.
Je/K. SCHEUCH & CO.

1028 Memorandum Telephone 9,12.
of Scheuch & Co.,
25 De La Bourse Street.
Havre, March 11, 1910.

To Messieurs Bank of Mulhouse,
E/V.

Gentlemen:
Inclosed we remit you port bill of lading for
S. N. E. Q. 100 bales

R. T. O. D. 100 bales
R. J. A. C. 100 bales
R. E. A. A. 100 bales
R. S. P. W. 100 bales
R. D. O. P. 100 bales

and requesting that you return us the through bill of lading.

Accept, gentlemen, our sincere salutations.

Je/K. SCHEUCH & CO.

1029

Scheuch & Co.,
Ferd Scheuch, Albert Schilling.
Adresse Telegraphique, Scheuch-Havre.
Telephone 912.

Havre, March 24, 1910.

Bank of Mulhouse,

E/V.

Gentlemen:

We have the pleasure to remit the inclosed "Port Bill of Ladings" for

	Bales
	Mouomoy for Bremen
R. M. P. A.	100
R. P. T. A.	100
	by S/S Kingstonian for Havre
Q. E. C. N.	100
S. R. L. P.	100
S. R. T. R.	100
R. C. R. C.	100
R. F. A. I.	100
S. L. Q. R.	100
R. M. O. R.	100
	by S/S Memphian for Havre
R. S. U. B.	100
R. E. S. W.	100
R. S. H. I.	100
S. R. T. A.	100
O. X. O. B.	100

requesting you to return to us the "Through Bill of Ladings."

Receive, gentlemen, our very sincere salutations.

p. pro. SCHEUCH & CO.
GEO. FREBOURG.

1030 Scheuch & Co.,
Ferd. Scheuch, Albert Schilling.

Adresse Telegraphique, Scheuch-Havre.
Telephone 912.

Havre, March 24, 1910.

Bank of Mulhouse,
E/V.

Gentlemen:

We are remitting inclosed "Port Bill of Lading" for

S. F. R. S.	100 B	Monomoy	Bremen
R. D. I. T.	100	do	do
R. S. C. N.	100	do	do
Q. E. R. F.	100	Virginia,	Havre
R. F. D. V.	100	do	do
R. E. S. C.	100	do	do
S. R. O. C.	100	do	do
R. O. B. O.	100	do	do
S. D. R. Y.	100	Memphian	
R. D. F. K.	100	do	
Q. N. I. L.	100	do	
R. G. Y. Z.	100	do	
R. E. T. J.	100	do	

requesting that you return us the "Through Bill of Ladings."

Receive, gentlemen, our sincere salutations.

p.pro. SCHEUCH & CO.
GEO. FREBOURG.

1031 Memorandum Telephone 9,12.
of Scheuch & Co.,
25 De La Bourse Street.

Havre, March 29, 1910.

To M. Bank of Mulhouse,
E/V.

Gentlemen:

Inclosed we remit you agent's receipt for

R. J. A. K. 100 B.
R. C. O. N. 100 B.
R. K. S. S. 100 B.

by steamer "Michigan" for Bremen. Also inclose port bill of lading for

R. V. A. N. 100 B.
R. L. T. S. 100 B.

requesting that you return us the "Through Bill of Ladings."

Receive, gentlemen, our sincere salutations.

1032 Memorandum Telephone 9,12.
of Scheuch & Co.,
25 De La Bourse Street.

Havre, March 29, 1910.

To M. Bank of Mulhouse,
E/V.

Gentlemen:

Inclose we remit you "Port Bill of Lading" for
S. T. A. C. 100 B. cotton
by S/S "Monomoy" for Bremen, and request that you return us the "Through Bill of Lading."

Receive, gentlemen, our sincere salutations.

p. pro. SCHEUCH & CO.
GEO. FREBOURG.

1033 Memorandum Telephone 9,12.
of Scheuch & Co.,
25 De La Bourse Street.

Havre, March 29, 1910.

To M. Bank of Mulhouse,
E/V.

Gentlemen:

Inclosed we remit you "Port Bill of Lading" for
R. O. C. S. 100
R. G. E. V. 100
Q. W. I. T. 100
S. S. S. S. 100
by S/S "Memphian" and requesting that you return us "Through Bill of Ladings."

Receive, gentlemen, our sincere salutations.

MENARD.

1034 Scheuch & Co., Havre. Je/K.

Havre, April 4, 1910.

Bank of Mulhouse,
E/V.

We have the pleasure of remitting the inclosed custody bills of lading for

R. P. E. D.	100 B.	S/S Memphian
R. E. A. B.	100 B.	Virginia
R. O. N. Y.	100 B.	"
R. E. A. X.	100 B.	"
R. K. E. G.	100 B.	"
R. A. A. P.	100 B.	"
S. T. U. B.	100 B.	"
R. G. I. N.	100 B.	"
R. I. N. C.	100 B.	"
Q. E. U. H.	100 B.	"
R. E. D. B.	100 B.	"
R. E. N. P.	100 B.	"
R. A. R. H.	100 B.	"

of which you will please acknowledge receipt.

Requesting that you return "Through Bill Lading."

Accept, gentlemen, our most sincere salutations.

SCHEUCH.

1035 Scheuch & Co., Havre. Je/K.

Havre, April 9, 1910.

Bank of Mulhouse,
E/V.

Gentlemen:

Inclosed we have the pleasure to remit you custody bill of lading or port bill of lading for

S. A. E. C.	100	
R. E. G. Y.	100	
R. M. C. K.	100	
R. W. A. T.	100	by S/S Virginia
Q. R. G. B.	100	
R. R. Z. T.	100	
S. M. A. R.	100	
R. Y. R. N.	100	

R. D. S. X. 100
S. B. I. N. 100

Requesting that you return "Through Bill of Ladings."

Of which you will kindly acknowledge receipt.

Accept, gentlemen, our very sincere salutations.

per pro. SCHEUCH & CO.
GEO. FREBOURG.

1036 Scheuch & Co., Havre. Je/K.

Havre, April 11, 1910.

Bank of Mulhouse,
E/V.

Gentlemen:

Inclosed we have the pleasure of remitting "Port Bill of Lading" for

R. N. E. P. 100
R. V. A. A. 100
R. E. G. A. 100 by S/S Virginia
R. M. O. L. 100
R. E. C. X. 100
R. S. U. T. 100

requesting that you return the through bills of lading.

Of which you will kindly acknowledge receipt.

p pro. SCHEUCH & CO.
GEO. FREBOURG.

1037 Scheuch & Co., Havre. Je/K.

Havre, April 14, 1910.

Bank of Mulhouse,
E/V.

Gentlemen:

Inclosed we have the pleasure to remit custody or port bill of lading for

R. O. N. E. 100 S/S Virginia
S. B. A. O. 100 "
R. Z. Y. Z. 100 "
S. P. C. R. 100 "
R. Y. M. A. 100 "

S. K. A. G.	100	Campican
R. G. N. E.	100	"
R. D. Y. K.	100	"
R. D. F. G.	100	"
Q. R. A. R.	100	"
Q. E. R. Y.	100	"
R. O. P. G.	100	"
R. E. N. R.	100	"

Requesting you to return us the through bill of ladings.

For which you will kindly acknowledge receipt.

Accept, gentlemen, our most sincere salutations.

p. pro. SCHEUCH & CO.
GEO. FREBOURG.

1038 Scheuch & Co., Havre. Je/K.

Havre, April 18, 1910.

Messieurs:

Inclosed we have the pleasure to remit custody bill of lading of Messrs. Steele, Miller & Co., of Corinth, for

R. M. N. K. 1/100 bales

which we will be pleased to have you acknowledge receipt of and also to return us the through bill of lading.

Accept, gentlemen, our sincere salutations.

SCHEUCH & CO.,
Per J. KAISER.

1039 Scheuch & Co., Havre. Je/K.

Havre, April 20, 1910.

Bank of Mulhouse,
E/V.

Gentlemen:

Inclosed we have the pleasure to remit you port bill or custody bill of lading for

R. D. E. A.	100	B.
Q. T. E. L.	100	B.
R. J. N. T.	100	B.
R. E. N. A.	100	B.

for which you will kindly acknowledge receipt, and also requesting that you return us "Through Bill of Lading."

Accept, gentlemen, our very sincere salutations.

p. pro. SCHEUCH & CO.
GEO. FREBOURG.

1040 Scheuch & Co., Havre. Je/K.

Havre, April 26, 1910.

Bank of Mulhouse,
E/V.

Gentlemen:

Inclosed we have the pleasure to remit you port bill of lading for

R. D. O. P.	100 B.	Honduras
R. D. B. O.	100 B.	do
R. D. P. V.	100 B.	Tampican
R. K. G. L.	100 B.	do
R. Y. T. A.	100 B.	do
Q. Q. Y. N.	100 B.	do
Q. R. E. D.	100 B.	do
R. P. C. O.	100 B.	do
R. G. G. Z.	100 B.	do
R. K. A. K.	100 B.	do
R. D. E. T.	100 B.	do
Q. A. R. R.	100 B.	do
R. S. I. C.	100 B.	do
	1300 B.	

for which you will please to acknowledge receipt, and also requesting that you return us the through bill of ladings.

Accept, gentlemen, our very sincere salutations.

p. pro. SCHEUCH & CO.
GEO. FREBOURG.

1041 EXHIBIT No. 5.

Statement of Drafts of Steele, Miller & Co., Accepted for Account of Scheuch & Co., by the Bank of Mulhouse (Epinal Agency), before the 1st of Sept., 1909.

Amt. of Bales	Marks	Amounts	Dates of Issue	Dates of Payment	Commission Received
	S S X X				
300	S I N X	16,394.10	18th June, 1909	September 28th, 1909	30.73
	S E A C				
	R A O O				
300	R M I O	16,578.31	do	do 29th "	31.08
	S K K N				
	O R B S				
400	S A S X	11,133.59			
	R O R C	11,099.90	19th June, 1909	do 30th, " E	41.68
100	R D O X				
	P A A S	5,880.09	19th June, 1909	October 8th, 1909	
	Q V A L	8,653.84			
300	R O S E	8,793.90	19th, June, 1909	do 8th, "	
	O B S E				
	P K A C	9,250.58			
300	P S O N	7,692.30	19th do	do 8th "	113.94
	P N G Z				
	P M C V				
150	P Z O D	8,728.65	19th June, 1909	do 8th, "	
	P N O C				
200	P D A R	11,763.82	19th do	do 8th, "	

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THIS PAGE IS BOUND

VERTICAL IN BOOK

100	P D C B	5,923.98	22nd June, 1909	October	10th, 1909		11.10
300	S I X W S S S W S A X W	9,615.39 9,557.28	12th July, 1909	do	22nd, "		
100	R O X X	6,413.92	12th do	do	22nd, "		
200	Q N D E R E I X R E Z X	13,047.04 15,958.84	12th do	do	22nd, "		
300	R X W Z Q R O N	12,785.12	12th do	do	22nd, "		144.31
200	S K I M R N B B		12th do	do	22nd, "		
50	S K V V						
100	R P E W	9,592.94	12th do	do	22nd, "		
200	S E A C R P O F	12,754.17	12th do	October	26th, 1909		35.96
100	R A R R	6,427.72	12th do	do	26th, "		
200	R A I M R O R O	12,147.31	19th July, 1909	October	31, 1909		22.76
		230,192.83					431.58

Statement of Drafts of Steele, Miller & Co., Accepted for Account of Scheuch & Co., by the Bank of Mulhouse (Epinal Agency), before the 1st of Sept., 1909.

No. of Bales	Marks	Amounts	Dates of Issue	Dates of Payment	Commission Received
3900		230,192.83	Forwarded		431.58
100	S O V V				
50	S W W O	8,974.15	July 21st, 1909	November 1st, 1909	
100	S S S O				
100	S S S A				
50	E S R R	15,041.84	July 19th, 1909	November 1st, 1909	
	S Y W Y				90.10
200	S Z Z O	11,929.04	July 21st, 1909	November 1st, 1909	
	R O R R				
200	R O W Z	12,108.04	July 21st, 1909	November 1st, 1909	
	S E R R				
200	R R O O	12,011.78	July 23rd, 1909	November 2nd 1909	
	R O O O				
300	R R R E	17,991.94	July 23rd, 1909	November 2nd 1909	89.96
	S S O N				
	S K K N				
300	S N X W	17,971.73	July 23rd, 1909	November 2nd 1909	

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	SSAR SBOA				
300	SDDS	18,324.34	July 26th, 1909	November 4th, 1909	
	SESL SLLN				79 98
200	SIAK RIRO	12,261.91	July 26th, 1909	November 4th, 1909	
200	RBBB	12,073.10	July 26th, 1909	November 4th, 1909	
		368,881.00			691.62

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ERTICAL IN BOOK

1043 At the execution of a commission for the examination of witnesses in a case depending in the District Court of the United States for the Eastern District of Louisiana, wherein J. A. E. Pyle is complainant, and the Texas Transport and Terminal Company, et als., are defendants, this exhibit numbered 5 was produced and sworn to by Frans Lyzell, and subscribed by him at the time of his examination.

(Signed) F. LYZELL.
(Signed) JOHN PRESTON BEECHER,
[Seal] Vice Consul of the United States of America at Havre, France, and Commissioner.

Statement of Drafts of Steele, Miller & Co., Accepted for Account of Scheuch & Co., by the Bank of Mulhouse (Havre Agency) After the 1st of September, 1909.

Date of Acceptation	No. of Bales	Amounts	Dates of payment	Com. received	Nature of documents
Sept. 13th, 1909	400	12,500.00			
		12,450.61	December 12th, 1909	46.78	Through Bills of Lading
Sept. 13th, 1909	300	12,524.13			
		6,262.72	Do 12th, "	35.22	"
" 13th, "	300	9,615.38			"
		9,012.85	Do 12th, "	34.92	"
" 15th, "	100	6,193.58	Do 14th, "		"
" 15th, "	500	15,384.61			"
		16,055.47	Do 14th, "		"
" 15th, "	300	9,615.38			"
		8,845.11	Do 14th, "		"
" 15th, "	300	9,615.38			"
		9,044.67	Do 14th, "	326.31	"
" 15th, "	300	9,615.38			"
		8,908.76	Do 14th, "		"
" 15th, "	300	9,615.38			"
		8,951.69	Do 14th, "		"
" 15th, "	100	6,208.26	Do 14th, "		"
" 15th, "	200	12,410.00	Do 14th, "		"

EXHIBIT No. 6.-

Statement of Drafts of Steele, Miller & Co., Accepted for Account of Scheuch & Co., by the Bank of Mulhouse (Havre Agency) After the 1st of September, 1909.

Date of Acceptation	No. of Bales	Amounts	Dates of payment	Com. received	Nature of documents
Sept. 15th, 1909	100	6,298.47	Do 14th, 1909		"
" 15th, "	400	12,500.00			"
		12,320.98	Do 14th, "	326.31	"
" 15th,. "	200	12,451.00	Do 14th, "		"
		12,444.51			"
" 16th, "	600	12,500.00	Do 15th, "	70.06	"
		12,424.63			"
" 17th, 1909	600	12,500.00			"
		12,563.42	Do 16th, "	70.12	"
		12,337.87			"
" 16th, 1909	100	5,547.70	Do 15th, "	10.40	"
" 17th, "	100	5,571.19	Do 16th, "	10.44	"
" 20th, "	400	10,694.07	Do 19th, "	41.68	"
		11,538.46			"
Oct. 4th, "	100	6,297.12	January 2nd, 1910	11.80	"
	5700	350,819.39	Amts. to Forward		657.77 "

14240.

640

1045	5700	350,819.39	Forwarded		657.77	Through
Oct. 5th, 1909	50	3,170.11	Jany. 3rd, 1910			Bills of Lading
	100	6,357.60				"
	100	6,285.77				"
	100	6,297.05	" 3rd, 1910		84.08	"
	50	3,233.93				"
	100	6,410.00				"
	100	6,538.22				"
	100	6,550.51				"
Do 6th, "	100	6,399.52	Jany. 5th, "		24.19	"
	100	6,502.68				"
	100	6,856.24				"
	100	6,779.66				"
	100	6,783.46				"
Do 19th "	100	6,812.83	Jany. 17th, "		102.36	"
	100	6,833.74				"
	100	6,829.02				"
	100	6,884.32				"
	100	6,837.24				"
	100	6,754.95				"
	100	6,607.06				"
	100	6,910.10				"
	100	6,638.45				"
Do 21st, "	100	6,610.14	Jany. 19th, 1910		100.41	"
	100	6,686.31				"
	100	6,669.10				"

EXHIBIT No. 6.

Statement of Drafts of Steele, Miller & Co., Accepted for Account of Scheuch & Co., by the Bank of Mulhouse (Havre Agency) After the 1st of September, 1909.

Date of Acceptation	No. of Bales	Amounts	Dates of payment	Com. received	Nature of documents
	100	6,675.80			"
	100	6,660.64			"
Do 25th, "	100	6,664.92			"
	100	6,658.66	Jany. 23rd, 1910	49.93	"
	100	6,647.02			"
	100	6,572.56			"
	100	6,556.23			"
	100	6,696.13			"
Do 25th, "	100	6,658.34	Jany. 23rd, 1910	74.63	"
	100	6,651.83			"
	100	6,671.99			"
	100	6,704.08			"
	100	6,986.47			"
Oct. 26th, 1909	100	6,872.17	Jany. 24th, 1910	76.02	"
	100	6,636.79			"
	100	6,669.67			"
	100	6,679.26			"
	100	6,935.15			"
	100	6,863.44			"

	100	6,781.01			Through Bills of Lading
	100	6,898.35			"
Oct. 26th, 1909	100	6,910.37	Jany. 24th, 1910	102.95	"
	100	6,871.74			"
	100	6,840.00			"
	100	6,799.00			"
	10600	678,610.55		1,272.38	
	10600	687,610.55	Amt. Forwarded	1,272.38	Through Bills of Lading
	100	6,990.26			"
1046	100	6,836.84			"
	100	7,115.00			"
	100	6,981.50			"
	100	6,924.51			"
Nov. 8th, 1909	100	7,117.07	Feby. 6th, 1910	145.51	"
	100	7,251.91			"
	100	7,179.30			"
	100	7,018.23			"
	100	7,135.83			"
	100	7,052.16			"
Do 8th, 1909	100	6,589.75	Presentation	24.76	"
	100	6,616.20			"
Nov. 9th, "	100	7,253.14	Presentation	94.75	"

EXHIBIT No. 6.

Statement of Drafts of Steele, Miller & Co., Accepted for Account of Scheuch & Co., by the Bank of Mulhouse (Havre Agency) After the 1st of September, 1909.

Date of Acceptation	No. of Bales	Amounts	Dates of payment	Com. received	Nature of documents
	100	7,368.00			"
	100	7,066.57			"
	100	7,045.96			"
	100	7,316.00			"
	100	7,148.01			"
	100	7,331.40			"
Nov. 10th, 1909	100	7,227.55	Presentation	204.59	"
	100	7,232.46			"
	100	7,069.52			"
	100	7,226.11			"
	100	7,045.97			"
	100	7,233.79			"
	100	7,624.09			"
	100	7,261.89			"
	100	7,530.95			"
	100	7,290.33			"
	100	7,261.70			"

	100	7,264.80			"
	100	7,307.51			"
	100	7,301.61			"
	100	7,238.78			"
Nov. 16th, 1909	100	7,688.18	Nov. 19th, 1909	282.43	"
	100	7,626.19			"
	100	7,538.02			"
	100	7,636.34			"
	100	7,529.24			"
	100	7,743.96			"
	100	7,660.57			"
	100	7,386.38			"
	100	7,483.50			"
	100	7,409.87			"
	100	7,538.57			"
	110	7,515.76			"
	100	7,571.78			"
	100	7,435.59			"
	100	7,496.63			"
	100	7,560.00			"
	100	7,476.47			"
	100	7,543.71			"
	100	7,349.37			"
	100	7,441.41			"
	16100	1,079,697.12		2,024.42	

EXHIBIT No. 6.

Statement of Drafts of Steele, Miller & Co., Accepted for Account of Scheuch & Co., by the Bank of Mulhouse (Havre Agency) After the 1st of September, 1909.

Date of Acceptation	No. of Bales	Amounts	Maturity	Com. received	Nature of documents
	16,100	1,079,697.12	Amts. Forwarded	2,024.42	
	100	7,148.75			Through
Nov. 17th, 1909	100	7,268.65	Nov. 20th, 1909	40.50	Bills of Lading
	100	7,182.64			"
1047					
	100	7,310.23			"
Nov. 24th, "	100	7,384.52	Jany. 23rd, 1910	41.08	"
	100	7,218.01			"
	100	7,252.26			"
	100	7,439.66			"
	100	7,335.71			"
	100	7,467.30			"
Nov. 29th, 1909	100	7,542.42	Feby. 27th, 1910	150.78	"
	100	7,540.55			"
	100	7,419.78			"
	100	7,523.66			"
	100	6,987.53			"
	100	6,930.43			"

	100	6,987.98			"
	100	7,422.85			"
Nov. 30th, 1909	100	7,470.39	Feby. 28th, 1910	55.58	"
	100	7,321.36			"
	100	7,429.03			"
	100	7,393.25			"
	100	7,376.16			"
Dec. 8th, 1909	100	7,421.94	Feby. 6th, 1910	69.51	"
	100	7,389.13			"
	100	7,490.27			"
	100	7,336.16			"
Dec. 15th, "	100	7,324.55	March 15th, 1910	41.34	"
	100	7,394.18			"
	100	7,334.09			"
Dec. 16th, "	100	7,403.39	Mch. 16th, 1910	41.52	"
	100	7,413.41			"
	100	7,375.72			"
Dec. 18th, "	100	7,357.06	Mch. 18th, 1910	55.17	"
	100	7,372.98			"
	100	7,319.04			"

EXHIBIT No. 6.

Statement of Drafts of Steele, Miller & Co., Accepted for Account of Scheuch & Co., by the Bank of Mulhouse (Havre Agency) After the 1st of September, 1909.

Date of Acceptation	No. of Bales	Amounts	Maturity	Com. received	Nature of documents
Dec. 21st, "	100	7,317.32	Mch. 21st, 1910	27.46	"
	100	7,325.94			"
Dec. 22nd, "	100	7,356.64	Mch. 22nd, 1910	27.37	"
	100	7,243.95			"
	100	7,738.53			"
	100	7,795.12			"
Jany. 7th, 1909	100	7,794.62	Apr. 7th, 1910	58.21	"
	100	7,717.58			"
	20,500	1,404,271.66		2,633.00	"
	20,500	1,404,271.66	Amts. Forwarded	2,633.00	Through Bills of Lading
	100	7,734.21			
1048	100	7,826.47			"
	100	7,948.80			"
Jany. 10th, 1910	100	7,815.84	Apr. 10th, 1910	146.86	"
	100	7,740.75			"

	100	7,914.82				"
	100	8,011.05				"
	100	7,847.13				"
	100	7,775.55				"
	100	7,713.68				"
	100	7,774.24				"
	100	7,919.27				"
Jany. 10th, 1910	100	7,948.49	Apr. 10th, 1910	59.42		"
	100	8,051.49				"
	100	7,758.07				"
Jany. 11th, 1910	100	7,682.81	Apr. 10th, 1910	28.95		"
	100	7,119.51				"
	100	7,077.82				"
	100	7,064.47				"
	100	7,099.00				"
	100	7,035.38				"
Feby. 2nd, 1910	100	6,899.05	May 3rd, 1910	119.10		"
	100	7,048.97				"
	100	7,122.96				"
	100	7,053.85				"
	100	7,031.16				"
	100	7,141.58				"

EXHIBIT No. 6.

Statement of Drafts of Steele, Miller & Co., Accepted for Account of Scheuch & Co., by the Bank of Mulhouse (Havre Agency) After the 1st of September, 1909.

Date of Acceptation	No. of Bales	Amounts	Dates of payment	Com. received	Nature of documents
	100	7,086.38			"
	100	7,054.57			"
Feby 2nd, 1910	100	7,051.93	May 3rd, 1910	133.10	"
	100	7,158.26			"
	100	7,207.14			"
	100	7,041.24			"
	100	7,066.42			"
	100	7,152.95			"
Feby. 5th, 1910	100	7,189.65	May 6th, 1910	13.48	"
Do 7th, "	1002	7,053.52	May 8th, 1910	13.22	
	100	7,313.75			
	100	7,214.50			
	100	7,248.05			
Feby. 8th, 1910	100	7,158.68	May 9th, 1910	108.77	"
	100	7,260.82			

	100	7,305.42			"
	100	7,282.42			"
	100	7,225.60			"
Feby. 14th, 1910	100	7,279.69	May 15th, 1910	13.64	"
	25,100	1,743,779.29		3,269.44	"

1049 At the execution of a commission for the examination of witnesses in a case depending in the District Court of the United States for the Eastern District of Louisiana, wherein J. A. E. Pyle is complainant, and the Texas Transport and Terminal Company, et als., are defendants, this exhibit numbered 6 was produced and sworn to by Frans Lyzell, and subscribed by him at the time of his examination.

(Signed) JOHN PRESTON BEECHER,
[Seal] Vice Consul of the United States of America at Havre, France, and Commissioner.
(Signed) F. LYZELL.

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EXHIBIT No. 7.

Statement of Drafts of Steele, Miller & Co., Accepted for Account of Mess. Scheuch & Co., by the Bank of Mulhouse (Siege of Mulhouse) after the first of September, 1909.

Dates Acception	No. of Bales	Amounts	Dates of Payment	Commission received	Nature of Documents
Nov. 15th, 1909	100	6,701.51	Feby. 13th, 1910	16.75	Through Bills of Lading
" 18th, "	100	6,648.70	" 16th, "		"
" 18th, "	100	6,906.96	" 16th, "	67.55	"
" 18th, "	100	6,723.36	" 16th, "		"
" 18th, "	100	6,743.15	" 16th, "		"
" 20th, "	100	6,885.10	Jany. 19th, "		"
" 20th, "	100	6,989.42	" 19th, "		"
" 20th, "	100	6,976.57	" 19th, "	101.94	"
" 20th, "	100	6,636.28	" 19th, "		"
" 20th, "	100	6,638.28	" 19th, "		"
" 20th, "	100	6,652.64	" 19th, "		"
Dec. 2nd, "	050	3,457.54	Mch. 2nd, 1910	8.65	"
" 17th, "	100	7,418.15	" 17th, "		"
" 17th, "	100	7,430.31	" 17th, "	74.10	"
" 17th, "	100	7,435.80	" 17th, "		"
" 17th, "	100	7,352.77	" 17th, "		"
" 24th, "	100	7,218.25	" 24th, "		"
" 24th, "	100	7,326.23	" 24th, "	72.65	"
" 24th, "	100	7,231.93	" 24th, "		"
" 24th, "	100	7,277.95	" 24th, "		"

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Jany.	7th, 1910	100	7,646.89	April	7th, "		"
"	7th, "	100	7,737.64	"	7th, "	76.82	"
"	7th, "	100	7,659.79	"	7th, "		"
"	7th, "	100	7,686.50	"	7th, "		"
"	10th, "	100	7,811.97	"	10th, "	19.58	"
"	13th, "	100	8,050.07	"	13th, "		"
"	13th, "	100	7,891.91	"	13th, "		"
"	13th, "	100	7,841.89	"	13th, "	99.41	"
"	13th, "	100	7,878.21	"	13th, "		"
"	13th, "	100	8,100.49	"	13th, "		"
"	17th, "	50	3,949.71	"	17th, "	29.61	"
"	17th, "	100	7,898.21	"	17th, "		"
		3100	226,831.79			567.06	

14240.

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1051 At the execution of a commission for the examination of witnesses in a case depending in the District Court of the United States for the Eastern District of Louisiana, wherein J. A. E. Pyle is complainant, and the Texas Transport and Terminal Company, et als., are defendants, this exhibit numbered 7 was produced and sworn to by Frans Lyzell, and subscribed by him at the time of his examination.

(Signed) JOHN PRESTON BEECHER,

[Seal] Vice Consul of the United States of America at Havre, France, and Commissioner.

(Signed) F. LYZELL.

1053 DEPOSITION OF ELISE PAUL DUBOIS, TAKEN UNDER COMMISSION ISSUED OUT OF THE CLERK'S OFFICE OF THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF LOUISIANA, ON JULY 17TH, 1911, IN THE ABOVE ENTITLED AND NUMBERED CAUSE, ON BEHALF OF THE SOCIETE GENERALE, ONE OF THE DEFENDANTS.

Offered and Filed November 20th, 1911.

United States District Court, Eastern District of Louisiana, New Orleans Division.

J. A. E. Pyle, Trustee,

vs. No. 12,243

Texas Transport & Terminal Company, et als.

1054 Depositions of witnesses, produced, sworn, and examined the 11th day of October, in the year one thousand nine hundred and eleven, in the City of Havre, Republic of France, under and by virtue of a commission issued out of the District Court of the United States, holding sessions in and for the Eastern District of Louisiana, in a certain cause therein pending and at issue, wherein J. A. E. Pyle, trustee, is complainant, and the Texas Transport and Terminal Company, et als., are defendants.

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ELISEE PAUL DUBOIS, of No. 27, Rue de la Bourse, Havre, France, aged 48 1/2 years, being duly and publicly sworn, pursuant to the directions hereto annexed, and examined, doth depose and say as follows:

Interrogatory No. 1:

Please state your name, age, residence and occupation. How long have you been engaged in your present occupation?

To the first interrogatory he saith:

My name is Elisee Paul Dubois, aged 48 1/2 years, I live in Havre, No. 27 Rue de la Bourse, and No. 2, Place Carnot, where I have been manager of the Bank "La Societe Generale" since April, 1896.

Interrogatory No. 2:

Do you know the Societe Generale, a defendant in the above entitled cause? If so, state whether or not it is an incorporated institution. In what country was it incorporated? What is the nature of its business? In what place or places has it a business domicile? What is its capital?

To the second interrogatory he saith:

I am therefore fully acquainted with this bank, the style of which is "Societe Generale pour favoriser le developpment du Commerce et de l'Industrie en France," and I hereby certify that the same was founded in Paris in the year 1864, with a capital of 120 million francs, which has since
1055 been increased several times up to the present figure of 400 million francs; the reserve stands at 64,800,-000 francs.

The Societe Generale treats all manner of banking business and had three agencies abroad, viz in London, San Sebastien, Monte Carlo, with more than 800 branches in France, one of which is in Havre.

Interrogatory No. 3:

Are you connected with the Societe Generale? If so, in what capacity and for how long? State generally the nature and scope of your authority and duties.

To the third interrogatory he saith:

I entered the services of the Societe Generale in Havre

as a clerk in the bookkeeping department on the 11th of August, 1880. My positions have been as follows: Head bookkeeper, chief of the bill department, controler, cashier, chief clerk, sub manager in July, 1895, and finally manager in April, 1896. Having been appointed by the board of directors of the Societe Generale I have full powers to manage the business of the agency in Havre, which employs 56 men who are under my responsibility.

The business transacted in Havre is carefully followed by the head office in Paris and by the board of directors, moreover the agency is periodically submitted to inspection, like all the big banking concerns in France.

Interrogatory No. 4:

If, in answer to previous interrogatories, you have said that the Societe Generale was engaged in the banking business in Havre, France, state how long it has been so engaged and state in a general way the nature and extent of such business. Did it include the furnishing and advancing of funds for the purchase of cotton and the taking and holding of the title to said cotton?

1056 To the fourth interrogatory he saith:

The Societe Generale created the Havre agency in 1869 to be able to deal here with all banking demands. During the 42 years of its existence, it has greatly developed and the business transactions comprise specially the following: deposit accounts, discounting of bills and warrants, drawing and cheque accounts, transfers, cable transfers, circular letters of credit, stock exchange transactions, issue and placement of loans, safe deposits, advancing money against securities, arbitrations in futures, opening of merchandise credits to accommodate Havre merchants, etc.

From 1869 the Havre agency commenced to open credits and has aways continued same to facilitate the importation of merchandise, strictly against drawings of documentary drafts at sixty or ninety days sight on the Societe Generale, these drafts are accepted when all documents are in order and in the bank's possession. The documents comprise: bills of lading, insurance policy, invoice, etc.; these are attached to the drafts and confer the full property of said merchandise (cotton, coffee, wool, leather, wood, corn, cocoa, etc.,) to the

Societe Generale, these documents are kept by them until their clients take them up against payment. In other words, the Societe Generale does not accept, on principle, any draft referring to an importation which is not fully covered by goods; it results from that, that the Societe Generale does not make any uncovered advances concerning importations to their importing clients as well as to the exporters in the United States and other foreign countries. We refuse to accept any draft concerning an importation which is not accompanied by a full set of documents.

Interrogatory No. 5.

Do you know the firm of Scheuch and Company, of Havre, France? How long have you known said firm. Who are the individual members thereof? State, if you know, the business in which said firm was engaged during the time you have known it.

1057 To the fifth interrogatory he saith:

I know the firm of Scheuch & Company, of Havre, very well; the firm was founded on the 15th of September, 1901. It consists of two partners, Mr. Ferdinand Scheuch and Mr. Albert Schilling, and I commenced to do business with them in July, 1906. At that period (July, 1906) Messrs. Scheuch & Co. were concerned in the cotton business, and carried on their business on the following absolutely distinct two lines:

1. They acted as agents representing certain number of American export houses. As agents, they tried to find in Havre buyers of cotton CIF for those houses, and in consequence they did not want any bankers for those transactions as they acted merely as intermediaries between the American sellers and the Havre buyers; only buyers have recourse to bankers.

2. They acted as importers of cotton on their own account, and in that quality, for their personal transactions, they were obliged, as all others importers, to secure the help of one or more banks. Having had good results from this importing business, M. M. Scheuch & Co., continued to increase their business on these lines from 1906 to 1910, in consequence

their financial means increased likewise. They still continued their agency business as that brought them considerable profits.

Interrogatory No. 6:

State, if you know, the general reputation enjoyed by said firm at Havre for business integrity and fair dealing from the time you first knew it down to and including May 7, 1910. State, if you know, its general reputation, during the same period, as to its solvency and financial responsibility. What sort of credit did it have at Havre?

1058 To the sixth interrogatory he saith:

At the end of June, 1906, when I asked for the head office's authorization to enter into business transactions with Messrs. Scheuch & Co., I wrote to my head office as follows:

"M. M. Scheuch et Schilling enjoy a very good reputation in this town: they are considered as serious, very active and well organized; they have made money and have at present 200,000 francs in their business."

This represents the general opinion one had in this town on M. M. Scheuch & Co., and in consequence of this good reputation, their great knowledge of cotton business, their honesty, they were able to develop their business and enter into business relations with the best firms in Havre. In this way they were supposed to have a capital of 700,000 francs in 1909. They enjoyed good credit and made progress from year to year, and it was only after the 7th of May, when the seizure of the cotton of the steamship "Texas" got known in Havre, that one realized here that M. M. Scheuch & Co. might fail if those cottons were definitely withdrawn from their bankers.

Interrogatory No. 7:

How was said firm regarded during said period as to its financial responsibility and business integrity by the Societe Generale and yourself? State whether or not during said period you became aware of anything which gave you any cause to doubt the solvency or honesty of said firm.

To the seventh interrogatory he saith:

During the whole of that period, the Societe Generale and

myself have always had the same favorable opinion on the business, the credit, the honesty and the financial responsibility of M. M. Scheuch & Co., and I have not had any reason to suspect their solvency and their honesty.

1059 Interrogatory No. 8:

Drying [during] said period did your firm have any business arrangements or dealings with the said Scheuch and Company? If yes, please give a clear, full statement, setting forth such business arrangements or dealings.

To the eighth interrogatory he saith:

As I have mentioned (answer 5) we entered into business relations with M. M. Scheuch & Co., in July, 1906, and we opened credits for their importations, the same as we do for other merchants in Havre, as I have described in answer 4.

Against documents (bills of lading, insurance policy, and invoice) for X bales of cotton marked so and so, we accepted drafts on us at sixty or ninety days sight drawn by the American exporters for the full value of the cotton mentioned. Messrs. Scheuch & Co. paid us 5% of the amount of the drafts to cover us against out of pocket expenses such as warehousing, insurance, differences in weight and quality, which might occur.

On arrival of the steamers, we presented ourselves to the steamers' offices or to the agents representing the steamship company as claimants to the cotton, and further obtained the permission from the customhouse officers to enter the goods. We then had them warehoused in our name, as a surety for our acceptances. When Messrs. Scheuch & Co. sold the cotton, they paid us over the money and after that we instructed the warehouse to hold the goods at their disposal. This proves that we were not uncovered at any time, because we give our acceptance only in exchange for full title deeds on the property; with these documents we received the cotton when it was unloaded and had same warehoused in our name, and we do not part with the documents until we are paid by Scheuch & Co.

1060 Further, we were guaranteed against a loss which which might occur by a fall in the price of cotton by Messrs. Scheuch & Co., having future sales contracts booked in our name at the Clearing House, for an equal

amount of bales as had been imported with our assistance. Of course, as our clients did not speculate they always bought back future cotton in our name to the exact amount of cotton which they sold for spot delivery. All big cotton houses have the same way of working; they sell future cotton to the same amount as they have imported (in this way, they minimize their risk against a fall), then when they sell part of the cotton which they hold, directly they cover same by buying the same amount on a future delivery, in this way they guard themselves against a loss on their imported cotton which might occur through a fall in the price.

Every firm working on other lines would run grave risks and Messrs. Scheuch & Co. were always desirous to evade these dangers, they never speculated in any way and we have always been pleased to encourage this way of working.

Interrogatory No. 9:

If, in answer to previous interrogatory, you have stated that the Societe Generale authorized Scheuch and Company to have drafts drawn on said bank by that firm's American customers for the purchase price of cotton, state if you have not already done so, whether the arrangement provided that such drafts should always be accompanied by documents which would give the bank title to the cotton described in the draft.

State whether or not the Societe Generale would have authorized the drawing of said drafts, or would have accepted the same if it had not believed that on acceptance it acquired title to and possession and control of the cotton described in the drafts.

What arrangements, if any, did the said bank have with Scheuch and Company in respect to the sale of futures in connection with the drawing or acceptance of any such drafts. Explain in whose names futures were sold and what was the purpose of such sale of futures.

1061 To the ninth interrogatory he saith:

Our arrangements made with Scheuch & Co. were that we would not accept American drafts drawn on the Societe Generale for their account, unless they were accompanied by full set of documents treated in number 8. And generally we took the precaution to demand the two nego-

tiable copies of the bill of lading and of the insurance policy before giving our acceptance. In this way, we were certain that the exporters could not make use of the duplicate documents and fraudulently create new drafts for the same cotton.

The Societe Generale was absolutely confident that the drafts accepted under these conditions conveyed to them the full property rights on the cotton described in the drafts and in the documents attached to these drafts, and if the Societe Generale had not had this absolute confidence and conviction, namely, that by giving their acceptance they obtained the full right, possession and control of the cotton described in these drafts, they would never had authorized the drawing of the drafts, nor would they have accepted them.

The future sales and purchases were always executed by Scheuch & Co., in our name, through brokers, and booked on the registers of the clearing house. In order to prevent a loss through a fall in the price of cotton we made the stipulation that there would always be the same number of bales sold for future delivery as there were bales in the warehouse in our name and sailing for Havre.

Interrogatory No. 10:

State whether or not the Societe Generale had any interest in or knowledge of the contracts or arrangements between Scheuch and Company and the shippers of the cotton conveyed by such drafts.

State whether or not the said bank extended or intended to extend any credit to said shippers of the cotton.

1062 To the tenth interrogatory he saith:

The Societe Generale had no interest in the contracts or the arrangements entered into between Scheuch & Co., and the cotton exporters. They even had no knowledge of said contracts and arrangements. The merchants in Havre attended to these operations and did not communicate same to their bankers. Our arrangements were entered into between Scheuch & Co. and ourselves, and they called for an accepting commission of 1/4 on the drafts accepted, and a further commission of 5 francs per 50 bales monthly on the sales contracts, entered by the Clearing House.

On principle, the Societe Generale does not open credits for foreign exporters of c[illegible] has never entertained the

intention to do some. They only open such credits for merchants established in Havre, according to conditions settled with them separately.

Interrogatory No. 11:

Do you know the firm of Steele, Miller and Company or any of its individual members? What is the nature or extent of your acquaintance with said firm or its individual members?

To the eleventh interrogatory he saith:

I know the name of Steele, Miller & Co., and that they belonged to the American firms who export cotton to Havre, but I have never seen any of the partners and I have never had anything to do with the partners nor with their firm; the same holds good for the Societe Generale, who have only received from Steele, Miller & Co., their usual advice of drawings, these advices were never answered as it is not the usance [?] of banks to do so.

1063 Interrogatory No. 12:

While the arrangements aforesaid existed between the Societe Generale and Scheuch and Company, what knowledge of or interest in the contracts or arrangements between Scheuch and Company and Steele, Miller and Company did said bank have.

State whether or not said bank ever extended or intended to extend any credit to the said Steele, Miller and Company.

To the twelfth interrogatory he saith:

Our business arrangement with Scheuch & Co. commenced in July, 1906. At this time, the firm of Steele, Miller & Co. probably did not exist or was not represented by Scheuch & Co.

Since then, neither Societe Generale nor myself have ever had any knowledge of the contracts or arrangements entered into between Scheuch & Co. and Steele, Miller & Co., and in which we have no interest at all.

As I have said in answer No. 10, our arrangements with Scheuch & Co. stipulated a commission of 1/4% per acceptance and a further commission of 5 francs monthly per contract for every 50 bales which was finally reduced to 3 francs.

The Societe Generale has never opened any credits in

favor of Steele, Miller & Co., and has never had the intention to do so.

Interrogatory No. 13:

Please give the date or dates of the first draft or drafts of Steele, Miller and Company which were accepted by the Societe Generale under the aforesaid arrangements with Scheuch and Company. Give also the date or dates of the last of such drafts of Steele, Miller and Company accepted by the Societe Generale. Please state the total number of bales of cotton during said period thus covered by drafts of Steele, Miller and Company accepted by the Societe Generale.

1064 To the thirteenth interrogatory he saith:

In execution of our previously mentioned arrangement with Scheuch & Co., the Societe Generale accepted drafts drawn for their account by exporters of cotton, particularly by Steele, Miller & Co.

The first draft drawn by Steele, Miller & Co. was accepted by the Societe Generale on the 12th of November, 1907, and the last drafts by the same house were accepted on the 24th of February, 1910; the total number of bales covered by the drafts of Steele, Miller & Co., and accepted by the Societe Generale for the account of Scheuch & Co., amounts to 8500 bales of which 500 bales for the year 1907, and 8,000 bales during the season 1909-10.

Interrogatory No. 14:

Did the Societe Generale pay at maturity all said drafts of Steele, Miller and Company accepted by it? Did it receive all the cotton described in said accepted drafts? If not, please state the number of bales not received and the marks thereof, and the dates and amounts of the drafts drawn against the same. For the purpose of this question and answer, treat the four hundred bales of cotton concerned in this suit as cotton received.

To the fourteenth interrogatory he saith:

The Societe Generale has regularly paid the accepted drafts drawn by Steele, Miller & Co. on the due dates. They have only received out of the cotton mentioned in those accepted drafts 7,900 bales; from which you will see that there are 600 bales missing, details of which follows below:

1065	Number	Marks	Dates of drafts	Amounts	Dates Acceptance	Due
	100 B/	Q M T A	8 February	38,607.70	21 February	23 May
	100 –	Q P L H	—	38,684.15	—	—
	100 –	R D F E	—	38,309.35	—	—
	100 –	Q R T Y	—	38,637.75	—	—
	100 –	Q T N E	—	39,595.	—	—
	100 –	Q R F H	—	39,416.65	—	—
	600 B/			Fr. 233,250.60		

Interrogatory No. 15:

With the exception of the cotton described in answer to the last interrogatory as not received, did Steele, Miller and Company perform their obligations in respect to the other drafts and shipments of cotton?

To the fifteenth interrogatory he saith:

With the exception of the 600 bales of cotton mentioned above as not received, Steele, Miller & Co., have fulfilled their engagement for all other drafts concerning shipments of cotton.

Interrogatory No. 16:

This is a suit in which J. A. E. Pyle, trustee in bankruptcy of Steele, Miller and Company, is suing to recover four hundred bales of cotton or the value thereof on the ground that the same were transferred by Steele, Miller and Company, while insolvent, to Scheuch and Company or the Societe Generale with the intent to prefer Scheuch and Company or the Societe Generale or both of them—the cotton in question being marked and numbered as follows:

100 bales of cotton marked Q M T A 1/100
100 bales of cotton marked Q P L H 1/100
100 bales of cotton marked R D F E 1/100
100 bales of cotton marked Q R T Y 1/100

1066 Please state whether the Societe Generale ever accepted any drafts drawn by Steele, Miller and Company against cotton so marked and numbered. If yes, please state when and by whom said drafts were presented for acceptance and the dates of acceptance.

What documents were attached to each of said drafts when presented for acceptance? What became of said documents when the drafts were accepted? If you say that they were delivered to the acceptor of the drafts, state whether or not they have since remained in its possession or control.

Have the drafts since been paid? If so, when and by whom?

Please annex as part of your answer to this interrogatory the said four drafts; and if you have answered that there were attached thereto bills of lading, insurance certificates and

invoices, please likewise annex to each draft the bill of lading, insurance certificate and invoice attached thereto.

To the sixteenth interrogatory he saith:

On the 21st of February, 1910, the Societe Generale received from Messrs. Ladenburg, Thalmann & Co., of New York, four drafts marked "documents against acceptance" and drawn at ninety days sight by Steele, Miller & Co. for account of Scheuch & Co., covering 400 bales of cotton. Attached to these drafts were one original through bill, one original insurance policy and an invoice for every parcel of 100 bales which corresponded with the quantities and marks mentioned on the drafts, as detailed below:

100 bales	Q M T A	Fr. 38,607.70
100 —	Q P L H	38,684.15
100 —	R D F E	38,309.35
100 —	Q R T Y	38,637.75

1067 On the arrival of the duplicates of these documents, which were received three or four days later from New York by another steamer, the Societe Generale accepted these four drafts at ninety days sight on the 21st of February, this making the due date of same 23th [rd] of May, on which date the four drafts were paid by the Societe Generale in Paris, which town was stipulated as place of payment.

We have, therefore, only accepted these four drafts after receipt of original and duplicate of the through bills of lading, original and duplicate of insurance policy and an invoice for each parcel of 100 bales. After our acceptance, the documents covering these 400 bales have been in our possession or under our control and we are inclosing them hereby together with the four drafts. (Exhibits No. 1 to 28.)

Interrogatory No. 17:

State whether or not the said bank had any reason at the time for not believing that bills of lading attached to the drafts were genuine? What was the belief of the bank on the subject?

What, if any, reason, had the bank at the time for not believing that the cotton described in the said drafts and the

bills of lading had been actually shipped and was on the way? What was the belief of the bank on the subject?

What was the belief of the bank in respect to the transfer to it of said bills of lading and its possession thereof being sufficient to give it possession and dominion over said cotton and entitling it to receive the same on its arrival?

To the seventeenth interrogatory he saith:

On the 21st of February, the date on which we received the documentary drafts, re. the four hundred bales, for
1068 acceptance, the Societe Generale had not the slightest reason to doubt the genuineness of the bills of lading attached to same, which did not differ at all from all other bills formerly received and through which we had already received more than 5,000 bales of cotton shipped by Steele, Miller & Co. We, therefore, firmly believed when accepting these drafts that the cotton described therein had been really shipped and was on its way to Havre, and that the possession of the bills of lading assured us of the full property of the cottons (as described and marked) and the incontestible right to receive same on arrival.

Interrogatory No. 18:

If, in answer to previous interrogatory, you have stated that the banks believed that said bills of lading were genuine, that the cotton described therein and in the drafts had been actually shipped and was on its way to Havre, and that the transfer to it of said bills of lading and its possession thereof gave it possession of and dominion over said cotton and entitled it to receive the same on its arrival, state what effect said beliefs had upon the action of the bank in accepting said drafts. If the bank had not entertained such beliefs, would it have accepted, or would it have refused, said drafts?

To the eighteenth interrogatory he saith:

It is because of this absolute confidence in the security offered by the bills of lading, the belief in the genuineness of the shipment and the validity of the rights which we had acquired through the transference of the bills of lading and their possession that the Societe Generale has accepted those drafts.

Without that belief and that conviction the Societe Gen-

erale would have refused to accept those drafts, and it would have been easy for them to liquidate at once the
1069 account of Scheuch & Co. if they had had the smallest suspicion about the validness of the bills of lading.

After having had 5000 bales of cotton, despatched to us from Steele, Miller & Co., towards the 15th September, 1909, we only had 900 bales running on the 16th of February, 1910, which were covered by through bills in our possession, against about fr. 347,000 drawn by Steele, Miller & Co.; these cottons were moreover received by us afterwards at the unloading.

Then, after the 16th of February, we have still accepted drafts of Steele, Miller & Co., for account of Scheuch & Co., against 2000 bales on the following dates:

18th February	400	bales of cotton
21st February	1200	bales of cotton
24th February	400	bales of cotton

If the Societe Generale had not had the absolute confidence of which I have spoken before, they would not only, not have accepted the drafts, re. the 2,000 bales presented from the 18th to the 24th of February, but would have asked Scheuch & Co., to retire the 900 bales sailing against payment of about fr. 347,000, and Scheuch & Co. had at that time enough money to pay the amount we would have asked for.

This fully proves that the Societe Generale had not the slightest suspicion on the validness of the through bills or the actual situation of Steele, Miller & Co.

Interrogatory No. 19:

Did the said bank ever receive any bills of lading issued by the Compagnie Generale Transatlantique each covering one hundred bales of cotton, corresponding with the marks and numbers of the four lots of 100 bales of cotton above
1070 referred to?

If yes, state when and how it received said bills of lading and whether a letter or note accompanied the same. Were there two sets of said bills of lading? State what has become of the originals? Annex the other set of said bills of lading to your answer to this interrogatory. Annex also the letter, if any accompanied the bills of lading, and state whether

it is truly the letter which you received at the time, and from whom it was received.

In whose possession and control have been the said bills of lading of the Compagnie General Transatlantique since said bank received the same?

In whose possession or control have been the bills of lading attached to the said four drafts since the said bank received the same?

To the nineteenth interrogatory he saith:

On April the 26th Messrs. Scheuch & Co. deposited in our offices 4 custody bills made out in duplicate issued by the Compagnie Generale Transatlantique, each for 100 bales of cotton and bearing the same marks and numbers as mentioned previously. Besides these the clerk who brought us those custody bills gave us a deposit note; this is the same note that I annex herewith. (Exhibit No. 29.)

Those custody bills were dated the 15th of April and indicated that our 400 bales of cotton ought to have been shipped per steamer "Louisiane."

The originals as well as the duplicates of those custody bills of lading have always been, since the 26th of April, in our possession or under our control. I am keeping the originals but inclose the duplicates of same. (Exhibits No. 30 to 33.)

The through bills of lading, against which the 4 drafts above mentioned were accepted, have also always
1071 been in the possession or under the control of the Societe Generale.

Interrogatory No. 20:

At the time the bank received the said bills of lading of the Compagnie Generale Transatlantique, hereafter called custody bills of lading, did you or the bank know that the said bills of lading attached to the drafts were not genuine but were forged or bogus?

Did you or the said bank know or believe at the time that said custody bills of lading represented cotton acquired and shipped by Steele, Miller and Company subsequently to the drawing and forwarding of said drafts and the said attached bills of lading, or did you and the bank believe that said custody bills of lading represented the same cotton as the bills of lading attached to the drafts apparently represented?

What knowledge or information had you or the said bank at any time prior to the receipt of said custody bills of lading that Steele, Miller and Company intended to procure and forward to the bank said custody bills of lading?

It is charged on behalf of the complainant that at some time subsequent to the date of said drafts and the attached bills of lading Steele, Miller and Company acquired and assembled four hundred bales of cotton, caused the same to be marked and numbered to correspond with the numbers and marks described in the said drafts, and caused the same to be shipped to New Orleans and thence by steamer of the Compagnie Generale Transatlantique to Havre, being the same cotton represented by the said custody bills of lading. State what knowledge or information you or the said banks had of these alleged acts of Steele, Miller and Company at the time the bank received said custody bills of lading?

To the twentieth interrogatory he saith:

When we received those custody bills of lading the Societe Generale and myself had no idea that the through
1072 bills attached to the drafts were forged or falsified.

The Societe Generale and myself had no knowledge that those custody bills of lading represented cotton bought and shipped by Steele, Miller & Co., after the issue and posting of the said drafts and through bills, and we thought that the custody bills represented the same cotton as mentioned by those through bills attached to the drafts.

Before receipt of the custody bills of lading (26th of April) the bank and myself had no knowledge of the creation of same, we never knew that Steele, Miller & Co., had intentions to create said custody bills and send them to the bank.

At the time we received those custody bills, neither the bank nor myself had any knowledge that some time after the issue of the drafts and the through bills attached to same, Steele, Miller & Co., had bought and put together 400 bales of cotton, which they had marked and numbered to [so] as to correspond with the numbers and marks mentioned in the said drafts and had them sent to New Orleans and from there by a steamship of the Compagnie Generale Transatlantique to Havre, this cotton being represented in the said custody bills.

The bank and myself only know the alleged facts from

the proceedings taken by the trustee for Steele, Miller & Co.'s failure, and it is impossible for us to verify same.

Interrogatory No. 21:

Please state whether on any prior occasion or occasions the said bank had received similar custody bills of lading purporting to represent the same cotton covered by through bills of lading attached to drafts for the price of the cotton, which had been previously accepted by the bank. If yes, please state on what occasions, and what, if any, explanations were given, and whether the same were believed by the
1073 bank. Please answer this question fully.

What effect had such previous experience and explanation in causing the said bank to suspect or not to suspect fraud or wrong on the part of Steele, Miller and Company when it received said duplicating custody bills of lading covering the said four hundred bales of cotton?

To the twenty-first interrogatory he saith:

Before the date, 26th of April, we had received out of a total amount of 8,000 bales for that season, covered by through bills and received against drafts drawn by Steele, Miller & Co., three port bills covering 300 bales of cotton, which were already covered by the through bills and had the same numbers and marks. When Scheuch & Co. remitted us those port bills, with support note attached, they took up the corresponding through bills to return same to Steele, Miller & Co., who had to give them to the railroad company who had issued same.

These exchanges of through bills took place on the following dates:

7 December, 1909, 100 bales "Mexico" port bill
14 February, 1910, 100 bales "Virginie" port bill
20 April, 1910, 100 bales, "Honduras" port bill

(I join copies of Messrs. Scheuch & Co. memos. as exhibits 34, 35, 36.)

On the 7th of December, 1909, I asked Messrs. Scheuch & Co. to explain this abnormal fact, namely, the existence of two bills for one and the same shipment of merchandise; this

I did on principle, because it only concerned 100 bales out of a total engagement of 3100 bales.

I told Mr. Scheuch the following:

Firstly. This may become dangerous; suppose, instead of only 100 bales it concerned larger quantities, and supposing the exporters are dishonest, they could then draw
1074 new drafts to which they could attach these port bills on other banks, and in such a way get paid twice for the same shipment.

Secondly. Has this port bill been addressed to you by Steele, Miller & Co., free of charge, or have you accepted a direct draft on yourself in exchange for same?

Thirdly. Have you noted anything in the way of working with your goodselves which might arouse your suspicions as to the solvency or honesty of Steele, Miller & Co.

Here are Messrs. Scheuch & Co.'s answers in numerical order:

Firstly. Your argument is sound, but we believe Steele, Miller & Co. incapable of acting dishonestly. In order to obtain a port bill when a through bill is already in existence, they perhaps have to give security to the company, and by giving up that through bill, that security may be returned to them.

Secondly. That port bill has arrived free of charge, without us having accepted a draft and without Steele, Miller & Co. having asked anything, except the return of the through bill. Moreover, we would have refused to pay anything against that port bill which belongs to you.

Thirdly. We have every confidence in the way Messrs. Steele, Miller & Co. work, and here is a detail of their punctuality: on the arrival of the cotton we never fail to claim differences in weight and quality which we sometimes detect; on our simple demand by cable, without even having received our detailed statement by letter, they cover us at once by cable transfers for those differences.

1075 From all that, one does not see any indication pointing to financial weakness.

After that conversation, which took place on the 7th of December, and having been satisfied with Messrs. Scheuch & Co.'s explanations, which I moreover had no reason to suspect, they wrote to Steele, Miller & Co. on the matter and received an answer in January, 1910, which they communicated to me, and I give the general contents below.

Steele, Miller, could not obtain port bills without giving a full guarantee. They had recourse to that way as it hastened the shipments, who without that were sometimes considerably delayed by the blocking in the warehouses and on the wharfs. If, however, one can obtain a port bill, the steamship company is obliged to ship the cotton in the shortest possible time.

I knew that the Havre merchants generally complained of receiving their cotton late and that this was caused by the blocking on the wharfs, and I absolutely believed in the sincerity of the explanations given to Scheuch & Co., and which they communicated me and strengthened same by the expression of the full confidence which they had in the honesty of Steele, Miller & Co.

The Societe Generale and myself being thus fully convinced of the veracity of the declarations which were made to us, and having besides seen that up to the 26th of April, 5900 bales had been delivered to us without the least difficulty, out of which 5700 were delivered on through bills and 200 bales on port bills of Steele, Miller & Co., we could really have no suspicion that the custody bills pertaining to the 400 bales ex "Louisiane" received on the 26th of April, had been remitted to us because our through bills bearing the same marks were irregular or falsified.

1076 Interrogatory No. 22:

State, if you know, when and how the said bank, or any representative thereof, learned for the first time that the said bills of lading attached to the said four drafts were forged or bogus or were claimed to be forged or bogus.

State, if you know, when and how the said bank, or any representative thereof, learned for the first time that said four custody bills did not cover, or were claimed not to cover, cotton shipped at the date of said bills of lading attached to

the said drafts, but covered, or were claimed to cover, cotton subsequently acquired and shipped by Steele, Miller and Company.

To the twenty-second interrogatory he saith:

We heard on the 8th of May, 1910, through Scheuch & Co. that proceedings had been started in New Orleans to prevent the cotton on the steamer "Texas" and shipped by Steele, Miller & Co. from being transported to Havre.

We were notified afterwards that the proceedings had been taken on the allegation that the through bills attached to the drafts accepted by the banks were falsified.

We then ignored that those proceedings could greatly effect us, as our custody bills did not concern the steamer "Texas" but concerned the steamer "Louisiane," which left New Orleans on the 1st of May, and in consequence we could not take any defensive measures as we did not know that our rights were involved, and as we thought that our 400 bales were on board the steamer "Louisiane."

On the 21st of May we heard from the Compagnie Generale Transatlantique that our 400 bales were not on board the "Louisiane," but through some incomprehensible error, which has involved us in these proceedings, the Compagnie Generale Transatlantique had left our 400 bales on the wharf,
1077 which ought to have been shipped by the "Louisiane" in conformity with the custody bills in our hands, and they shipped in their place per steamer "Louisiane" 400 bales belonging to other banks who held custody bills for the steamer "Texas" sailing 6 to 8 days later.

It was therefore on the 21st of May that we first knew that we held through bills for 400 bales which the trustee of Steele, Miller & Co. purported to be falsified.

The proceedings started against the "Texas," which we heard of through Scheuch & Co., on the 8th of May, interested us, as we held 200 bales Q T N E and Q R F H (see answer No. 14), without master's receipt nor advice of shipment, and those proceedings confirmed the suspicions which we had since a few days concerning our through bills re. those 200 bales. With regard to the 400 bales mentioned before, we completely ignored that they were alleged to be forged and concerned in the proceedings against the "Texas," as up to May 21st, we believed our cotton to be on board

the "Louisiane," by which they ought to have arrived in the regular way, and moreover, we had no knowledge at all of the fraudulent proceedings employed by Steele, Miller & Co. to falsify the through bills; in the same way we had no notion whether there were few or many falsified through bills, nor which were the falsified bills, nor in whose hands they were.

It was therefore only on the 21st of May when we noted the absence of our 400 bales on the steamer "Louisiane" that we knew and understood for the first time that our through bills for those 400 bales were purported to be falsified.

It is also on that same date, the 21st of May,
1078 that we knew and understood for the first time that the allegation of the trustee, namely, that custody bills were purported to cover cotton bought after the dates of drawings and shipped later by Steele, Miller & Co., applied exactly to our 4 custody bills per steamer "Louisiane." of this we knew nothing before that date.

I have thought it necessary to make this statement in order to complete and to determine exactly the statement made in my first affidavit, which does not indicate the exact date on which our attention was specially drawn to the proceedings taken against the "Texas;" it is evident that before the 21st of May, the date on which we noted the absence of our 400 bales on the "Louisiane," we could not know, that the action taken against the "Texas" interested us as it did the three other banks, and up to that date we had only received from Scheuch & Co. information re. those proceedings, which were vague and not detailed.

Interrogatory No. 23:

It is charged by complainant that at the time Steele, Miller & Company delivered the cotton covered by the said custody bills of lading to the Compagnie Generale Transatlantinque or at the time it forwarded the said custody bills of lading to Havre, or at the time the same came into the physical possession of the Societe Generale, the said bank knew or ought to have known that Steele, Miller and Company intended thereby to prefer said bank over their other creditors.

Please state whether such charge is true at any of said

times, and give the reasons or facts upon which your answer is based.

1079 To the twenty-third interrogatory he saith:

The delivery of those 400 bales to the Compagnie Generale Transatlantique, which were covered by the said custody bills, and the mailing of those custody bills to Havre, was done by Steele, Miller & Co. on their initiative, unknown to the Societe Generale; for that reason the Societe Generale knew nothing and could have no knowledge of the fact that Steele, Miller & Co., by doing likewise, thereby marked their intention to favor us to the detriment of the other creditors.

Moreover, as the Societe Generale has always considered that they obtained the full right on the cotton described in the drafts and through bills attached after having accepted those drafts, the fact that on the 26th of April they received custody bills covering the same cotton, could really not have made them suppose that they received a preference in that way to the detriment of other creditors, who they did not even know existed.

Interrogatory No. 24:

When the Societe Generale received the said custody bills of lading, did it know or believe that it was thereby receiving and interest or right in or to the cotton purporting to be covered thereby in addition to what it believed it already had as the acceptor of the said four drafts and the holder of the said bills of lading attached thereto.

To the twenty-four interrogatory he saith:

When receiving the said custody bills on the 26th of April, the Societe Generale did not know or believe that they received in that way any interest or any more right to the cotton, which those bills were said to cover, than they already firmly believed they possessed as acceptors of the said four drafts and as possessors of the said through bills attached to same.

Before the 26th of April, we thought, and this
1080 was strengthened through our experience during that season, that we would continue to receive our cotton, at the unloading, by presenting through bills, possibly accompanied by agent's or master's receipts which were re-

mitted to us by Scheuch & Co. when they received same from the exporters. Experience has taught us that those agent's or master's receipts were not strictly necessary, as up to the 26th of April, out of the 5700 bales obtained by us through presenting our through bills, 2000 bales had been obtained by us from the Compagnie Generale Transatlantique from 4 steamers without the slightest difficulty, although we had no agent's or master's receipt corresponding with the through bills for those 2000 bales.

On the 26th of April, when we received custody bills instead and in place of agent's or master's receipts, we thought that the cotton represented by same was the same as that covered by the through bills, and that on the 15th of April Steele, Miller & Co. had not been able to obtain those custody bills without giving security, as they had done previously, in conformity with their declarations treated in answer No. 21 and in which we sincerely believed.

Interrogatory No. 25:

Please state fully and in detail the extent and nature of the knowledge or information of the Societe Generale as to the solvency or insolvency of Steele, Miller and Company at the time it accepted said four drafts, at the dates of said custody bills of lading and at the dates when the same came into the actual physical possession of said bank. Give the nature, extent and sources of the bank's information on the subject from day to day from the date of the reported failure of Knight, Yancey and Company.

If, in answer to previous question, you state that
1081 on April 29th, 1910, a cable was received by Scheuch and Company from Steele, Miller and Company announcing that the latter had suspended payment, state what knowledge or information the said bank then had as to the assets or liabilities of Steele, Miller and Company or as the sufficiency of their property at a fair valuation to pay their debts.

To the twenty-fifth interrogatory he saith:

The Societe Generale had full confidence in the solvency of Steele, Miller & Co. when they accepted the aforesaid drafts on the 21st of February; this they proved by accept-

ing the drafts for 2,000 bales of cotton between the 18th and 24th of February, 1910. (See answer No. 18.)

Far from knowing the bad situation Messrs. Steele, Miller & Co. were in, the Societe Generale believed the situation to be good.

On the 15th of April, the date of the custody bills, nothing had come to our knowledge which might have diminished the confidence which the Societe Generale had in the solvency of Steele, Miller & Co.'s financial situation.

On Tuesday the 26th of April, when the Societe Generale received the 4 custody bills dated 15th of April, early in the afternoon, they had no knowledge of the insolvency of Steele, Miller & Co.; of this they were informed on the 29th of April by Messrs. Scheuch & Co.

Before that date the Societe Generale had only known the following:

On the 21st of April, in the morning, we heard that Knight, Yancey & Co. had stopped payments; this news we heard was known the day before in Liverpool; at that time there were no rumors concerning Steele, Miller & Co.

On Saturday evening, April the 23rd, Scheuch &
1082 Co. told us that they had received a wire from Bremen informing them that a bank in said town had refused to accept drafts drawn by Steele, Miller & Co., and alleging to have that same out of principle. We thought that the said bank acted likewise by way of precaution, because of the unfavorable impressions made by the discovery of the frauds committed by Knight, Yancey & Co.; we had not the slightest idea that Steele, Miller & Co. could have committed similar acts, and we did not doubt that they would promptly settle their business with the Bremen bank by taking the necessary steps which we thought their financial position was capable of doing.

In the evening of the 26th of April, some hours after we had received our custody bills (3 or 4 hours) dated the 15th of April, we were informed that a firm in Havre had received a cable from New Orleans stating the failure of Steele, Miller & Co.

We communicated this to Scheuch & Co., who told us that they were very much surprised at that, as they had not heard of it from Steele, Miller & Co., and they ought to have been informed in the very first place.

In the morning of the 27th of April, that same Havre firm found a second cable from their correspondents in New Orleans asking them to keep the news contained in their first cable strictly private, as the failure had not been confirmed.

The 27th and 28th of April we were still under the impression of this quasi-denial, we still believed that Steele, Miller & Co. were in momentary difficulties which could be settled, and which had been caused by the refusal of Bremen to accept their drafts; because we still did not know the actual situation they were in.

At last on the 29th of April, Messrs. Scheuch & Co. informed us that they had just received a cable from
1083 Steele, Miller & Co. telling them that they had been obliged to stop payments.

From that date and up to the 7th of May inclusive, we had not received any other information re. the actual situation of Steele, Miller & Co.; during the whole of that period the Societe Generale and myself have never had any information referring to the amount of the assets and the engagements of Steele, Miller & Co., neither did we have any details which enabled us to make a comparison between the value of their assets and their liabilities.

Interrogatory No. 26:

If, in answer to previous interrogatories, you have stated that the bank believed that the custody bills of lading represented the same cotton which had been paid for by the acceptance of the said four drafts and which the bank was entitled to receive, state what effect, if any, knowledge of the insolvency of Steele, Miller and Company by the bank at the date of said custody bills of lading or at the date when they came into the physical possession of the bank would have had upon the belief of the bank that it was receiving only cotton to which it was entitled.

To the twenty-six interrogatory he saith:

I have pointed out before that the Societe Generale neither knew, nor could have known, about the solvency of Steele, Miller & Co. on the 15th of April, the date of the custody bills, neither in the afternoon of the 26th of April, the date when we received the bills.

But even had we known the news of that insolvency on

the dates referred to above, that news could not have shaken our conviction that our rights on the 400 bales were absolute and integral, and that the Societe Generale alone
1084 was qualified to claim and receive these 400 bales, which was based on their acceptance of the drafts concerning to those cottons indicated by their special marks, and on the engagement undertaken by Steele, Miller & Co. to ship the cottons described in that way.

Our conviction would, moreover, have rested on the fact that the Societe Generale, who have paid these drafts, was in the regular possession of all the documents establishing their rights to the described cotton, there ought not to exist any other creditor besides the Societe Generale who could have any right, by showing documents bearing the same marks, on our 400 bales specially specified and marked in this way, which Steele, Miller & Co. were bound to ship in order to faithfully execute their engagement.

Interrogatory No. 27:

State, if you know, the financial condition of Scheuch and Company and the individual members of said firm, and how long they have been in such financial condition.

To the twenty-seventh interrogatory he saith:

The financial position of Scheuch & Co., as I have already indicated in my preceding answers (No. 5 & 6) had progressed satisfactorily from the date the firm was established, namely, in 1901. So that in September, 1909, the capital of the firm was said to be 700,000 francs. The whole fortune of the two partners had been sunk in their business and they then informed us that they hoped that the season 1909-10 would give as profitable results as the preceding seasons.

In 1910, Messrs. Scheuch & Co. lost largely through the failure of Steele, Miller & Co. The non-shipment of the 1550 bales of cotton which represented more than 600,000
1085. francs already absorbed nearly their whole capital, and when on the 8th of May the news arrived that the cargo of the "Texas" had been retained, it became evident that Scheuch & Co. could not pay their bankers in full if the cargo of the "Texas" was retained definitely in the United States.

Interrogatory No. 28:

There has been offered in evidence on behalf of the complainant in this cause a copy of a publication at Havre called the Bulletin de Correspondence of date April 27, 1910, which contains the following:

"Nous avons parle, hier, d'une nouvelle faillite aux Estats-Unis A ce propos, on a recu, de Liverpool, le telegramme suivant: Plusieurs Maisons de cotton seraient atteintes par la faillite de la Maison Steel, Miller and Co. de Memphis, qui faisait de nombreuses affairs avec l'Europe."

And a copy of the same publication, dated April 28, 1910, which contains the following:

"Cette semaine, les marches ont ete influences par deux sortes d'evenments. En premier lieu, on a appris la faillite de deux Maison d'exportation des Estates-Unis; si les details donnes ne pouvaient que semer la mefiance et, par suite, amener un ratentissement des affairs, par contre, ils devaient contribuer au raffermissement de cours, puisqu'ils indiquaient law possibilite de ne pas etre livre de coton achete, du moins dans les delais prevus. Il est a esperer, d'ailleurs, qu'l y a de l'exageration dans toutes les rumeurs mises en circulation et que ce qui vient de se passer aura surtout pour resultat de faire rechecher les moyens qui assureront une plus grande securite a ceux qui doivent importer du coton."

Please state whether the quoted paragraphs from said paper or either of them was read or known at the time by you or any representative of the Societe Generale. Please state, if you know, any reports or information which came to you or the Societe Generale at the time of said publication which tended to confirm or to discredit or cast doubt upon the correctness of the statements in said quoted paragraphs.

To the twenty-eighth interrogatory he saith:

I already mentioned (answer No. 25) the receipt of the cable received in the evening of the 26th of April by a firm in Havre, and of the arrival of one in the
1086 morning of the 27th, informing them that the failure of Steele, Miller & Co. had not been con-

firmed. I must have read the "Bulletin de Correspondence" in the morning of the 28th of April; it appeared late in the evening of the 27th. I believe that I can remember having spoken about it to Messrs. Scheuch & Co., and that they said that they did not believe that the news was correct, because they would certainly been informed directly.

The news arrived at Scheuch & Co. in the morning of the 29th of April, at a time when I could have obtained some information from the "Bulletin de Correspondence" of the evening before.

In Havre, as well as in foreign towns, exaggerated rumors get about in troubled times which are sometimes incorrect; these the papers get hold of and publish the same without verifying them. During that period the failure of two American cottor houses was reported to me, and those same houses are still in existence. I could not do otherwise than address myself to Scheuch & Co. for information.

The two articles evidently refer to Steele, Miller & Co., but they do not throw any light on to their financial position. "It is to be hoped that the rumors afloat are exaggerated, and one does not make any allusion to frauds committed. One talks about the non-delivery of bought cotton, which would only convey to us that European merchants had bought cotton from Steele, Miller & Co. at a time when the price was lower, and that, since a rise had taken place, Messrs. Steele, Miller & Co., were not delivering that cotton, which would result in a loss to the buyers.

1087 Interrogatory No. 29:

There has been offered in evidence on behalf of the complainant in this cause a copy of a publication called the Liverpool Daily Post and Liverpool Mercury, of date April 27th, 1910, which begins with the following headlines:

"Cotton Market Outlook
Another American Firm
Suspends Payment
Disturbing Succession of
Unsettling News
The Knight, Yancey Position
Losses Smaller Than Originally
Feared;"

and the first paragraph is as follows:

"The Liverpool cotton market has received further shocks to-day, first by the alarming reports of new crop damage from frost, which many of the morning papers treated in 'scare' fashion; and later by the statement that another American firm, Mess. Steele, Miller and Co. of Memphis, had suspended payment. Liverpool, we understand, is not largely affected by the failure, the losses falling chiefly on Bremen importers."

Please state whether the above article from said paper was read or known at the time by you or any representative of the Societe Generale. Did you or any representative of the said bank receive any reports or information about the time of said publication which tended to confirm or to discredit and cast doubt upon the correctness of the statements in said quoted paragraphs. If so, state, if you have not already done so, what were said reports or information.

To the twenty-ninth interrogatory he saith:

Neither the Societe Generale nor myself nor any of our representatives know or have known of the article mentioned which was said to have appeared in the Liverpool Daily Post and Mercury on the 27th of April.

1088 Interrogatory No. 30:

Has the Societe Generale any available means to be reimbursed or paid the drafts against said 400 bales of cotton, except through the sale of the said cotton in controversy in this suit?

To the thirtieth interrogatory he saith:

The Societe Generale does not see the possibility of being paid in full for the accepted drafts of Steele, Miller & Co. otherwise than by the sale of the cotton in dispute.

Scheuch & Co. owed us more than Fr. 200,000 as principal, because of the non-shipment of 200 bales and the injunction re. the 400 bales in dispute. Scheuch & Co. have only been able to pay up to the present date 33%, which reduces their debt to about 135,000 fr. plus interests and costs of lawsuits. We therefore believe it to be strictly necessary, in order to have this debt cleared, to sell the 400 bales, as our clients will not be able to pay us any more than a very small procentage.

Interrogatory No. 31:

Do you know, or can you set forth, any other matter or thing which may be a benefit or advantage to the parties at issue in this cause, or either of them, or that may be material to the subject of this your examination or the matters in question in this cause? If yea, set forth the same fully and at large in your answer.

To the thirty-first interrogatory he saith:

I have learned from the evidence given by Mr. W. H. Hendren, manager of the Texas Transport & Terminal Co., that seven cables, produced during that evidence, were exchanged between Mr. Ducrot, agent in Havre of the Compagnie Generale Transatlantique, and the said Mr. Hendren.

1089 I want to state herewith that neither the Societe Generale nor myself had the slightest knowledge of that exchange of cables, which occurred absolutely without our knowing of same, and that we only learned of their existence after having read the evidence of the said Mr. Hendren.

I have had occasion in a special affidavit to rectify some inaccuracies, which concern ourselves, and made during an examination of Mr. C. H. G. Linde, before the Court of Aberdeen, and I again confirm what I have declared in said affidavit.

I think it useful to add that on the 29th of April, 1910, after that we have been informed by Scheuch & Co. of the failure of Steele, Miller & Co., they did not reimburse us for the drafts referring to the 200 bales of cotton; this is contrary to what Mr. Linde declared, probably through an erroneous interpretation of the information furnished by Scheuch & Co. to Steele, Miller & Co.

In my previous answer No. 30 I have explained that the drafts for these 200 bales are included in the Scheuch & Co.'s debit of Fr. 202,791.90, and it was a long time after the 29th of April that Scheuch & Co. were able to give us the indicated distribution.

On the 8th of May the news reached Havre of the seizure of the "Texas" and made matters far more complicated; at that moment the 3 banks, who knew that they had cotton on the "Texas," understood that if that action was sanctioned by the Court, they might lose considerable amounts, which Scheuch & Co. could not repay them.

At last the Societe Generale, who heard on the 21st of May of the non-arrival of the 400 bales, which they thought were on the "Louisiane," understood, at that moment for
1090 the first time, that the seizure of the 'Texas" might mean also a considerable loss to them, and they at once decided to join the defense which the 3 other banks had already begun.

It is materially impossible for me to answer at length to the evidence of the bankers and brokers given before the court; however, I desire to remark:

1. That it is perhaps unwise on the part of those honorable witnesses to judge severally from so far the European bankers concerned, without knowing of the circumstances which determined the acts of the said bank, and the precautions they had taken to avoid losses.

2. That it is always easy, when one is in the country where such woeful acts have been able to be committed for several years without being punished, when at last, after a minute inquiry, one has been able to determine the exact means employed to commit those acts to tell the banks, who are the innocent sufferers: It is impossible that you were deceived, as similar things ought to have been noticed by you.

Recapitulating all, the only objection which could have been raised against us is that we had too great a confidence in the financial standing and the commercial honesty of Steele, Miller & Co.; but are we the only ones to have had such confidence? No, because we learn from the assertion from the trustee, that Europe has accepted far more than 3,000,000 dollars of Steele, Miller & Co.'s drafts before the failure of that house, and that is the best proof that the confidence inspired by Steele, Miller & Co. was general. (Signed) E. DUBOIS.

(Signed) J. B. BEECHER,
Commissioner.

[Seal]

1091 Cross-examination of ELISEE PAUL DUBOIS:

First cross-interrogatory:

Please state whether the Societe Generale has an agent within the City of New Orleans, State of Louisiana, or within the Eastern District of Louisiana.

To the first cross-interrogatory he saith:

The Societe Generale has no agent within the City of New Orleans, State of Louisiana, neither within the Eastern District of Louisiana.

Second cross-interrogatory:

State if your authorization to Scheuch & Company to have drafts drawn on the Societe Generale by Scheuch & Company's American customers was in any way different from the ordinary and customary method prevailing in Europe by which banks accepted drafts, retaining possession of the documents until the acceptances have been discharged.

To the second cross-interrogatory he saith:

The authorization which we gave to Scheuch & Co. to have documentary drafts drawn on the Societe Generale by American export houses of cotton was in no way different from the ordinary and customary method prevailing in Europe, by which the banks accepted drafts, retaining the documents attached to same, and later receiving and keeping the goods, mentioned in these documents, until the acceptances had been paid.

Third cross-interrogatory:

State if the Societe Generale ever had at any time any relations or dealings with Steele, Miller & Company by which the said Societe Generale purchased from Steele, Miller & Company any cotton, and state particularly if you purchased from Steele, Miller & Company the four hundred bales of cotton marked Q M T A, Q P L H, R D F E, Q R T Y.

1092 To the third cross-interrogatory he saith:

The Societe Generale has never at any time had any relations or dealings with Steele, Miller & Co.; they had not bought from Steele, Miller & Co. the four hundred bales of cotton which are now in dispute, neither did they buy any other cotton from Steele, Miller & Co.

The Societe Generale accepted the four documentary drafts appertaining to the four hundred bales aforesaid, in accordance with arrangements made with Scheuch & Co., and for their account long ago; those drafts having be [been] drawn by Steele, Miller & Co., it is clear that at the exact moment when the Societe Generale accepted same, Steele, Miller &

Co. contracted a strict and absolute obligation towards the said bank to execute the right and prompt delivery of the cottons described in the drafts and documents, and to assure them of a speedy transportation to Havre.

Fourth cross-interrogatory:

If you answer that you did make a direct purchase of this cotton from Steele, Miller & Company, state whether or not the negotiations for the purchase were verbal or in writing, and if you answer that they were verbal, you will state the date or dates on which these negotiations took place, and with whom and in the presence of whom; and if you should answer that the contract was in writing, you will annex to these interrogatories copies of any agreements and all correspondence leading up thereto, and you will permit the authority taking these depositions to examine the original documents and papers and verify your statements, certifying that same are correct.

1093 To the fourth cross-interrogatory he saith:

I have already declared that the Societe Generale has not bought any cotton from Steele, Miller & Co., and I further add that they have not entered into negotiations with that house in order to make direct purchases of cotton: the Societe Generale are bankers and not merchant-traders.

Fifth cross-interrogatory:

Please state whether it was and is your custom to purchase cotton in the American market for your own account, or whether or not your business, insofar as cotton is concerned, is confined to the accepting of drafts for account of your own customers.

To the fifth cross-interrogatory he saith:

The Societe Generale does not effect any importation for their own account, and in consequence they do not buy and have not bought cotton for their own account in the American market. All the importations for which we accept documentary drafts are in consequence for the account of our clients, who are importing merchants. I do not think I need to repeat now the manner of these operations, as I have fully described same in my answers to the direct examination (No. 8.).

Sixth cross-interrogatory:

State whether or not you charge a commission for accepting drafts and whether the same is not the usual and customary commission charged by foreign banks, and attach to your depositions a statement showing the commissions charged by you in the acceptances for account of Scheuch & Company of the drafts drawn by Steele, Miller & Company.

1094 To the sixth cross-interrogatory he saith:

The documentary drafts that we have accepted for account of Scheuch & Co. have always been subject to a 1/4% commission and this 1/4% commission is generally adhered to here by the banks. We have also taken a commission of 5 Fr. per month and per sale contract for every 50 bales executed in our name. We reduced this commission to 3 frs. in 1909 in consequence of Mr. Scheuch asking for same.

The covering by future sales booked in the name of the bankers and also the slight commission mentioned above is generally practiced here by the bankers and approved of by their merchants clients. To be able to see how this method works, I refer you to my answer No. 9, in the direct examination.

I join to that answer a statement showing the commission charged to Scheuch & Co. for the acceptances of the drafts drawn by Steele, Miller & Co. (Exhibit No. 37.)

Seventh cross-interrogatory:

File with your deposition a copy of the account of Scheuch & Company with your house from September 1, 1909, to date. Permit the notary to examine the original books and papers showing the account so as to verify your statements as being correct.

To the seventh cross-interrogatory he saith:

I send you herewith a copy of the account opened in favor of Messrs. Scheuch & Co., from the 1st of September, 1909, up to date; these accounts have been verified from our books by the consul. (Exhibit No. 38 to 57).

Eighth cross-interrogatory:

What drafts of Steele, Miller & Company had you accepted under your arrangement with Scheuch & Company previous

to September 1, 1909? Attach to your depositions a statement of the drafts, the marks of the cotton supposed to have been secured by bills of lading, the dates the said drafts were drawn and the dates the said drafts were paid; and
1095 state particularly whether or not they were paid by you by the sale of the cotton, and if so, attach to these depositions a statement showing the disposition of the cotton, to whom sold and how the proceeds were applied.

To the eighth cross-interrogatory he saith:

Up to the 1st of September, 1909, the Societe Generale has accepted for account of Schenck & Co. documentary drafts drawn by Steele, Miller & Co. as follows:

1. In 1907 four drafts amounting to Frs. 159,994.51 for 500 bales of cotton.

2. From the 28th till the 31st of August, 1909, thirteen drafts amounting to Fr. 641,607.70 for together 2,000 bales of cotton.

I join hereto as exhibit No. 58 a statement giving the amounts of these drafts, the dates they were issued on, and the due dates, the quantities and marks of the 500 bales of cotton in 1907, and of the 2000 bales of cotton in the end of August, 1909.

The cotton has been sold directly by Schenck & Co., to whom we have remitted delivery orders against payment for the counter-value of those cottons sold.

Schenck & Co. have not told us, nor were they bound to tell us, to whom they sold these cottons, neither did they inform us of the conditions on which it was sold, and we were satisfied if we were covered by the payments made to us by Schenck & Co., at each withdrawal for the amounts advanced by us on every parcel of cotton, which we held at their free disposal.

1096 Ninth cross-interrogatory:

Attach to these depositions a statement of drafts drawn by Steele, Miller & Company against your bank and accepted by you under your engagement d'importation from September 1, 1909, up to and including the last draft accepted previous to the bankruptcy proceedings, to-wit, May 4, 1910.

Describe each draft, describe the character of security attached (bill of lading), give the date on which each draft was accepted and the date on which each was paid or discharged, and state particularly how discharged, and state whether the draft was paid by the sale of the cotton by your bank, or by Scheuch & Company; and if you state the drafts were paid by the sale of the cotton by your bank then attach a statement showing the sale, to whom made and how the proceeds were applied.

To the ninth cross-interrogatory he saith:

I inclose herewith a statement of the documentary drafts drawn by Steele, Miller & Co., and accepted by the Societe Generale for the account of Scheuch & Co., from the 1st of September, 1909, till the 4th of May, 1910. The last drafts were accepted on the 24/2/1910. This statement (Exhibit No. 59) gives the amount of every draft (accepted against through bills and insurance policies and every document in duplicate and invoice for the cotton described in every draft), the date of acceptance and the due date of the drafts, the quantities and marks of the cotton described on the drafts and on the documents joined to same.

The total of these accepted drafts drawn by Steele, Miller & Co. amounts to Fr. 2,130,396.15, against documents for 6,000 bales of cotton.

If one adds the drafts accepted between the 28th and 31st of August, 1909, and amounting to Fr. 801,602.21, against 2,000 bales of cotton (cottons received after the 1st of September), and of which the details have been joined to my answer No. 8, one obtains for the season 1909-10 a total of Fr. 2,772,003.85 drafts drawn by Steele, Miller & Co., and accepted for account of Scheuch & Co., by the Societe Generale against a total of documents representing 8,000 bales of cotton.

1097

The accounts of Scheuch & Cie sent in support of my answer No. 7 correspond with the total importation of these 8,000 bales and contain all the entries referring to same. Of these 8,000 bales we have only received 7400; of the 600 missing bales, 200 bales appear not to have been shipped by Steele, Miller & Co., being a breach of their engagement; the 400 others have been shipped by Steele, Miller and they ought to have reached us by the steamer "Louisiane": these are now in dispute.

We have been covered against our acceptances for 7400 bales of cotton really imported by payments which Scheuch & Co. made us against our delivery orders for the cotton which they had directly sold to their clients, to the best of their own interests, and without us having ever known, neither had we any need to know, the names of the buyers and the conditions on which the sales had been executed.

I am sorry not to be able to determine the exact period when every draft was finally covered through the payments made by Scheuch & Co., because when selling to a buyer in this town, let us say 100 bales of good middling, Scheuch frequently delivered parts of parcels bearing different marks (for instance, 30 bales marked A. B. C., 46 bales marked D. E. F., and 24 bales G. H. I.), so as to be able to obtain for those 100 bales the exact corresponding type to the classification of good middling which had been sold. When
1098 taking up the delivery orders for those 100 bales, Scheuch & Co. paid us a round amount without splitting this amount according to the accepted drafts, and we entered the total to the credit of their account without splitting same, after we have assured ourselves that they have covered us for the value of the hundred bales put at their disposal.

That question moreover seems to be secondary; the essential part is to point out that, firstly, all the payments made by Scheuch & Co. have always been against withdrawal of cotton, sold directly by them without the intervention of the Societe Generale, and, secondly, that Scheuch & Co. have faithfully covered us for our acceptances up to 7400 bales, which were really received by us on their arrival in Havre.

Tenth cross-interrogatory:

To what extent is Scheuch & Company indebted to your bank at this time, and what security have you for any such indebtedness?

To the tenth cross-interrogatory he saith:

At the present moment the firm of Scheuch & Co. owes the Societe Generale the sum of Fr. 134,561.85 value 30 September, 1910, besides interest and charges.

The money owed us by Scheuch & Co. amounted to Fr. 202,791.90; our debtors have been able to refund us 1/3, or Fr. 67,587.20, by realizing the largest part of their commercial

assets. We hope that they will still be able to pay us a sufficient amount to reimburse us for our interests and our charges.

As guarantee for the Fr. 134,561.85, which Scheuch & Co. still owes us, as principal, we hold the documents for the 400 bales of cotton mentioned before, it must be ob-
1099 served that the 400 bales have been sold shortly after we received same in Havre, and that the amount realized has been cashed by us and booked to the credit of a special account; that account, on the other hand, has been debited by the amount of the caution which we had to furnish in America to obtain the cotton and which caution is nearly quite equivalent to the value of the amount credited.

Moreover, we hold the documents (through bills, insurance policies and invoices) of the 200 bales which appear not to have been shipped by Steele, Miller & Co., and which we have always kept in our possession.

Eleventh cross-interrogatory:

Attach to your depositions a statement of your acceptances against American cotton during the season of 1909 and 1910, that is, beginning from September 1, 1909, and ending August 31, 1910. What was the total amount of drafts accepted by you during the cotton season of 1909 and 1910 against American cotton?

To the eleventh cross-interrogatory he saith:

During the season 1909-10, from the 1st of September, 1909, till the 31st of August, 1910, we have accepted drafts, drawn for the counter value of American imported cotton, for the quantities and amounts mentioned below.

These figures have been furnished without details as professional secrecy does not allow us to disclose the names of our clients.

Month.	Bales.	Amounts.
September, 1909	6,450	Fr. 2,115,584.00
October, 1909	14,506	4,731,508.29
November, 1909	15,560	5,678,171.45
December, 1909	7,900	2,971,960.78
January, 1910	2,000	687,693.90
1100 February, 1910	2,537	883,469.95
March, 1910	2,780	966,539.90

April, 1910	530	160,530.20
May, 1910	300	110,100.00
June, 1910	5,984	1,963,843.20
July, 1910	1,230	385,683.90
August, 1910	....	.....
Total (1909/10)	59,777	Fr. 20,645,086.10

Twelfth cross-interrogatory:

When did you last accept any cotton drafts for account of Scheuch & Company drawn by Steele, Miller & Company, or Knight, Yancey & Company?

To the twelfth cross-interrogatory he saith:

It was on the 24th of February, 1910, that the Societe Generale accepted the last drafts drawn by Steele, Miller & Co. for account of Scheuch & Cie, and on the 3rd of December, 1907, that the Societe Generale accepted the last draft of Knight, Yancey & Cie for account of Scheuch & Cie.

Thirteenth cross-interrogatory:

Did you limit acceptances for Scheuch & Company? If you state that you limited Scheuch & Company in the amount of acceptances for account, give your reason for not continuing to accept, and did you at the same time discontinue accepting cotton drafts for other houses?

To the thirteenth cross-interrogatory he saith:

We have limited the acceptances for account of Scheuch & Co., in the same way as we limit without exception, the acceptances for the account of all our clients.

The limit for our acceptances for account of Scheuch & Co. has undergone the following modifications since the opening of business relations:

	July, 1906	Fr. 500,000
1101	December, 1907	1000,000
	October, 1909	2000,00

These successive increases in the limit for acceptances have been granted to Scheuch & Co. by the Societe Generale in consideration of the good results which they obtained through

their importing business as well as their agency business, and they were justified by the constant increase of their finances and by their reputation of perfect honesty.

Scheuch & Co. knew of these fixed limits and they have always strictly respected same. We have therefore never had occasion to make the slightest observation on that point, and we have never refused to accept a draft drawn for their account.

Moreover, we have not stopped accepting cotton drafts drawn on us for account of other houses, and that for a very simple reason: the failure of Knight, Yancey & Co., which was known to us on the 21st of April midday, and that of Steele, Miller & Co., which we learned from Scheuch & Co. in the morning of the 29th of April, came to us as two great and unexpected surprises, two "coups de foudre," as we had all confidence in the engagements we had assumed; untill [until] the sudden and brutal failure of those two houses, we could not have thought that those engagements, which we considered as sound, were on the contrary susceptable to inflict grave losses on our clients, and in consequence on ourselves.

Fourteenth cross-interrogatory:

At the time of the failure of Knight, Yancey & Company, had you accepted for account of Scheuch & Company, or any other party, drafts of Knight, Yancey & Company? If you answer yes, annex to your deposition a statement of each draft, together with a statement of the bills of lading attached to these drafts, and state whether or not these obligations have been paid and by whom, or whether or not you now hold same.

1102

To the fourteenth cross-interrogatory he saith:

At the time of the failure of Knight, Yancey & Cie, we have not a single draft drawn on us by that house for the account of Scheuch & Co., neither for the account of any other firm.

Fifteenth cross-interrogatory:

Was your bank aware of the delay in the arrival of the cotton for which it had accepted drafts of Knight, Yancey & Company and Steele, Miller & Company?

To the fifteenth cross-interrogatory he saith:

Towards the month of February, 1910, the greater part of

the importing merchants complained generally about the delays in the arrival of their cotton, which were becoming more frequent during that season than during the preceding ones. They believed these delays were due to the cotton being sent in too great a haste from the interior to the ports, which resulted in considerable obstructions in the ports of the United States and a prolonged delay of the cotton on the wharfs and in the warehouses where they were blocked by fresh arrivals from the interior.

At that time I have had interviews with a certain number of merchant clients and non-clients of the Societe Generale; all told me that they were submitted to the same detrimental delays; this was not only specially the case with shipments from Knight, Yancey & Co. or Steele, Miller & Co., but generally with all shipments made by American firms through the means of through bills. The whole community then came to the conclusion that the delays of that season were due to the blocking in the ports and that all would right itself in a
1103 few months, when as in preceding years, the enormous movement of the crop towards the port began to diminish.

That was also the opinion of Messrs. Scheuch & Co., which we heard of when we had occasion to talk to them re. the delays in the arrival of Steele, Miller & Co.'s cotton.

We had full and entire confidence in the concordant reports of our clients and of the honorable merchants whom we have questioned; moreover, those reports were very probable, because it is true that the cotton crop 1909/10 has been sent to the ports with great rapidity, the same which happened to the preceding ones.

On the 31st of January, 1910, the total receipts for the first 5 months amounted to already 8,031,000 bales, of which 5,686,000 bales were in the ports; more than 5,000,000 bales had already been exported and on the 3rd of February, 1910. Havre had already received since the 1st of September 723,000 bales of American cotton against 430,000 bales during the same period in 1908/9.

The obstructions caused on our wharfs and in our warehouses gave us an idea of what it must have been in the American ports.

The fact is equally probable that the cotton received in the ports for exportation were blocked on the wharfs or in the

warehouses by later arrivals of cotton, and that the cotton which arrived last was the first to be shipped; this must surely have been the case in America in the same way as it took place in France during periods of obstructions, as well for cotton as for other merchandise.

As the general cause for these delays had been explained to us in a plausible and probable way, we did not con-
1104 ceive the slightest fear concerning the good ending of our importations of cotton; this concerned as well the shipments from Steele, Miller & Co. as the few shipments which we had then from Knight, Yancey & Co., and these were moreover promptly settled, and we believed firmly, as did the Havre merchants, that all would be regular in a few months, as the diminuation of the receipts in the American ports would soon relieve same of the obstructions on the wharfs and in the warehouses.

Sixteenth cross-interrogatory:

If you answered yes to the fifteenth cross-interrogatory, state whether or not you made any complaint as to these delays to the steamship lines, and if you should answer yes, state whether the complaints were made verbally or in writing, and if you answer the complaint was made verbally, state to whom made and in the presence of whom, and if you answer the complaint was made in writing, annex to your deposition copies of the complaints, together with the replies you received, and submit the originals to the authority taking these depositions, that he may compare them with the copies and certify the copies as being correct.

To the sixteenth cross-interrogatory he saith:

Having thus obtained the conviction that the delays of the cotton were due to a general cause, and as we never thought nor had the suspicion that those delays could depend on acts of the American shippers, we never addressed a complaint to the steamship companies.

Seventeenth cross-interrogatory:

During the latter part of January or the early part of February, 1910, did you not stop the line of credit extended to Scheuch & Company by way of acceptances. If you answer yes, state why you stopped said line of credit, and state

whether or not you gave notice of this fact to Scheuch & Company. If you answer yes, state whether said
1105 notice was verbal or in writing. If verbal, give the date or dates when given, to whom and in the presence of whom. If you gave such notice in writing, attach to your depositions a copy of such notice or notices and submit the originals to the authority taking these depositions, to the end that he may compare same with these copies and verify them as being correct.

To the seventeenth cross-interrogatory he saith:

I repeat here the declaration already made under No. 13, the Societe Generale has never at any time stopped or reduced the credit opened in favor of Scheuch & Cie, by means of acceptances of documentary drafts.

Eighteenth cross-interrogatory:

Under the direct interrogatory number twenty-one you have been asked to explain the circumstances of your receipt of the custody bills of lading. In answering this interrogatory you will annex all correspondence that you may have had with Scheuch & Company, or anyone else on the subject; you will state whether or not you made any inquiry of the Compagnie Generale Transatlantique, as to how two sets of bills of lading for the same cotton could be in existence at the same time. If you state that you made inquiry of the Compagnie Generale Transatlantique or any source other than Scheuch & Company, you will state whether this inquiry was verbal or in writing; if you answer verbal, state the date or dates when made, to whom the inquiry was addressed and in the presence of whom; and if you answer this inquiry was made in writing, you will attach to your deposition a copy of the communications written by you and received in reply, and you will submit the originals to the authority taking these depositions, to the end that he may compare them with the copies
1106 and certify the copies as being correct.

To the eighteenth cross-interrogatory he saith:

I have answered at length, in my answer to question No. 21 (direct examination) under which circumstances the Societe Generale received the custody bills and I joined to that answer

the notes or memorandums which Scheuch & Co. remitted us at the same time as the custody bills.

I join hereto copies of our three memos of the 7th of December, 1909, 15th of February and 20th of April, 1910, as exhibits No. 60, 61, 62, acknowledging receipt of the custody bills and remitting in exchange the through bills. We did not acknowledge receipt of the custody bills re. the 400 bales now in dispute.

There is no other correspondence in existence re. those custody bills between the Societe Generale and Scheuch & Co., neither with any other person or company. Moreover, we have not asked any verbal information re. those custody bills from the Compagnie Generale Transatlantique, neither from any other person. We knew through Scheuch & Cie of Steele, Miller & Co.'s assertain, namely, that it was not easy to obtain port bills and that in order to obtain same they were compelled to furnish full guarantee.

We believe in good faith in those assertions, and it was on the 8th of May, through the proceedings of the failure, that we understood that these declarations were suspected, however without being able to determine in any certain way if our through bills for the 400 bales were genuine or false, or how they could have been falsified.

Nineteenth cross-interrogatory:

Under the eleventh cross-interrogatory you have been asked to state the amount of business done by you in accepting cotton bills of lading in the season of 1909 and 1910.

1107 You will state at this time whether or not in any of these transactions you permitted the substitution of custody bills of lading for through bills of lading. If you answer that you did, you will give the names of the firms by which this substitution was performed, the dates of the drafts, the amounts of the drafts, the dates of the through bills of lading and the dates of the custody bills of lading. We charge you that we are not discussing captains or mates receipts, but are asking solely if in your experience with American cotton shippers other than Steele, Miller & Company any case has ever arisen by which port bills of lading and custody bills of lading were in existence for the same cotton and at the same time that the original bills of lading were in your possession. You will answer this question fully and, as stated above, you

will give the names of any American cotton houses by, with and through whom any such transactions occurred.

To the nineteenth cross-interrogatory he saith:

We have no knowledge of having exchanged port bills or custody bills with other houses. That only occurred with the account of Scheuch & Co., and only for dealings between them and Steele, Miller & Co.

I have fully explained in my answer No. 21 (direct examination) on which dates we received custody bills, previous to the 26th of April, on which date we received the custody bills re. the 400 bales; I have fully indicated what we thought and did at the occasion of the first exchange for 100 bales (7th of December, 1909), and how we believed in the explanations given to us. I therefore refer to the numerous explanations contained in my preceding answers, and I herewith point out that we have never given our consent to anybody allow-
1108 ing them to use port bills or custody bills when through bills were already in existence.

When Steele, Miller & Co. created those port or custody bills they were acting without us knowing same, without our authorization, but when we received custody bills instead of master's or agent's receipt, which we naturally expected to receive, we did not hesitate to take those documents which were legitimately intended for us and belonged to us, as they referred exactly to the marks and quantities described in our drafts and original documents, and we were moreover convinced that Steele, Miller & Co. could not have obtained such custody bills without furnishing full guarantee.

Twentieth cross-interrogatory:

You have previously been asked whether or not you had any dealings with Knight, Yancey & Company and whether or not you held in your possession any accepted drafts of Knight, Yancey & Company about the time of the failure of Knight, Yancey & Company. If you answered yes, state whether or not when the failure of Knight, Yancey & Company was announced, you made any inquiry concerning the cotton presumably covered by your bills of lading, and if you answer that you did, attach to your depositions copies of the inquiries, together with the replies thereto.

To the twentieth cross-interrogatory he saith:

The Societe Generale has never had dealings with Knight, Yancey & Co. When they failed, we did not inquire about the shipments of their cottons, as we had at that moment not one accepted draft running drawn by the said house, as I have already pointed out in my answer No. 14.

Twenty-first cross-interrogatory:

Did you or did you not know at the time of the failure of Knight, Yancey & Company that the said firm of
1109 Knight, Yancey & Company had carried on its business by forging bills of lading, and if you answer yes, state whether or not this was a matter of general knowledge at Havre at that time.

To the twenty-first cross-interrogatory he saith:

In my answer to No. 25 of the direct examination, I have pointed out that the news of Knight, Yancey & Co.'s suspension was known to us in the morning of the 21st of April: to be more correct, I add that it was exactly midday, and at that moment, neither during the rest of the day, did I hear that one talked about frauds committed by that firm, re. their bills of lading. On the following days one began to talk here of frauds, rumors which came from Liverpool, but nobody could tell us whether those rumors were founded and nobody could explain to us, had the rumors been true, what the frauds exactly consisted of, neither if they had been committed with or without the co-operation of the agents of American railroads. At the present moment we are not yet certain of that last point.

Twenty-second cross-interrogatory:

Did you have any conversation with C. H. G. Linde of Steele, Miller & Company between January and May, 1910; and if you say that you did, repeat this conversation.

To the twenty-second cross-interrogatory he saith:

In my answer to No. 11 of the direct examination, I have declared that I never knew and never had seen any of the members of the firm Steele, Miller & Co. I repeat this declaration, and with regard to Mr. C. H. G. Linde, I have

never had any conversation with him between January and May, 1910.

Twenty-third cross-interrogatory:

1110 File as an exhibit to your deposition all correspondence, telegraphic or otherwise, that passed between your bank and Scheuch & Company, and between your bank and any American firm or individual, between January and May, 1910, inclusive, with reference to the business of Steele, Miller & Company, or Knight, Yancey & Company. Attach as an exhibit all correspondence, telegraphic or otherwise, that passed between your bank and Scheuch & Company and the German American National Bank of New Orleans or A. Breton, its vice-president, or the Whitney Central National Bank of New Orleans, or the Canal-Louisiana Bank & Trust Company of New Orleans, or the Hibernia Bank & Trust Company of New Orleans, or any other bank of [or] banker, between April 18, 1910, and May 15, 1910.

To the twenty-third cross-interrogatory he saith:

The Societe Generale and myself have not had any telegraphic correspondence or other correspondence with Scheuch & Co., neither with any American house or person between January and May, inclusive, 1910, which in any way refers to the business of Steele, Miller & Co., and Knight, Yancey & Co. I have already joined to other answers (No. 21 of the direct examination, No. 18 of the cross-examination) the correspondence referring to the custody bills received up to the 26th of April; I now join all our running correspondence with Scheuch & Co. for the period above mentioned (January to May, 1910): exhibits No. 63 to 171.

Between the 18th of April and the 15th of May, 1910, we have neither had telegraphic or other correspondence in any way referring to the business of Steele, Miller & Co. and Knight, Yancey & Co. with the German American National

1111 Bank of New Orleans, or with M. A. Breton, the vice-president, or with the Whitney Central National Bank of New Orleans, or the Canal Louisiana Bank & Trust Co. of New Orleans, or with any other bank or bankers.

During this period, 18th of April till the 15th of May, we have corresponded with the following American Banks and

only for current business which had not the slightest relation to the business of the firms in question:

Messrs. Brown Brothers & Co., New York.
Guaranty Trust Co., New York.
Knauth, Nachod & Kuhne, New York.
Wells Fargo & Co.'s Bank, New York.
Alex. Brown & Sons, Baltimore.
Wells Fargo & Nevada N'l Bk., San Francisco.
Whitney Central Nat'l Bank, New Orleans.
Brown Brothers & Co., Boston.
First Nation Bank, Chicago.
Franklin National Bank, Philadelphia.

I do not know if it is the real intention of the plaintiff to ask for the production of all the running correspondence which has nothing to do with the present proceedings. If that is his intention, I must observe that we are bound by professional secrecy and that the Societe Generale would not be fulfilling their duty if they produced papers showing the current business of their clients; moreover, as those businesses have nothing to do with the object of this case, and as the relevation of same could not have the slightest difference on the issue of this lawsuit.

As I have to give this answer solely not to betray my professional duty, I should, however, be distressed if it could be taken as an indication of want of sincerity on the
1112 part of the Societe Generale or as a refusal to supply the proofs.

In order to avoid the risk of a similar rendering of my answer, I herewith declare that I have submitted all our correspondence to the consul (letters received, copies of ours), which has been exchanged between the American banks and ourselves from the 18th of April till the 15th of May, 1910, so that the consul could certify that all that correspondence only refers to current affairs and has nothing to do with the business of Steele, Miller & Co., and Knight, Yancey & Co.

Twenty-fourth cross-interrogatory:

State whether or not you permitted Scheuch & Company to make a habit of swapping bills of lading in all transactions had between you, and state when for the first time you per-

mitted the substitution of said bills of lading. When you have fixed the date of the first substitution, state what you did with the supposed original through bills of lading. Did you return them to Scheuch & Company, and, if so, did you take a receipt or writing from Scheuch & Company, and if you answer yes, annex to your deposition a copy of any receipt or writing which you may have taken from Scheuch & Company.

To the twenty-fourth cross-interrogatory he saith:

I renew my declaration contained in No. 19: we have never permitted Scheuch & Co. at any moment to make a habit of exchanging the bills of lading, in all the transactions they had with us.

In my answer No. 21 of the direct examination, I have already declared that Scheuch & Co. remitted us for the first time on the 7th of December, 1909, a custody bill for 100 bales of cotton. Referring to this exchange, Scheuch & Co. gave us explanations which we judged to be satisfactory.

To that custody bill a memorandum from Scheuch & Co. was joined, asking to give them in exchange the cor-
1113 responding through bills for the hundred bales. We returned to Scheuch & Co. the above mentioned through bill, together with a memo dated the 7th of December and which I have already joined a copy to my answer No. 18. Scheuch & Co. acknowledged receipt of same in a letter dated the 8th of December, of which I join copy herewith as exhibit No. 172.

For the other exchanges, which were not frequent, Scheuch & Co. did not send us any acknowledgments.

Twenty-fifth cross-interrogatory:

What other firm besides Steele, Miller & Company ever engaged in this business of exchanging bills of lading for the same cotton or for any other article? State specifically the name of any firm or individual except Steele, Miller & Company which substituted bills of lading covering the same cotton without filing evidence of the fact that it was done by and with the consent of the transportation company.

To the twenty-fifth cross-interrogatory he saith:

Not a single other firm besides Steele, Miller & Co. has

to our knowledge acted in a similar way (exchanging documents), either for cotton or any other merchandise.

I know, however, that forwarding companies in America take up from the transport companies bills of lading representing various parcels of merchandise grouped under their name as shippers and as consignees. Those forwarding companies deliver bills of lading, which form part of the bill of lading which they hold, and bear the same marks, quantities and steamer; those partial bills of lading are attached to the drafts drawn on the real consignees of the goods, who must apply to the agents of the forwarding company in order to obtain delivery on arrival.

1114 In that case two bills of lading exist for the same merchandise: the one delivered by the transport company is in the hands of the forwarding Co., and if that company is honest, as I suppose they are, they will not make use of same to procure funds; the others delivered by the forwarding company are used to finance the shipments and are attached to the drafts drawn on the real consignees.

When we discount drafts with similar documents attached, we do so being confident that the business is straightforward; we however have not, and we cannot have the proof, that the documents of the transportation company have not already been made use of in some fraudulent manner by creating other drafts.

We have neither had the proof that Steele, Miller & Co. had really made an agreement with the Compagnie Generale Transatlantique to obtain custody bills under a caution, but we had confidence in the declaration made by Steele, Miller & Co. to Scheuch & Co., on our instigation; these declarations expained that they had resorted to this way in order to hasten the shipments.

In January, 1910, the merchants began to complain generally (see my answer No. 15 of the cross-interrogatory) of the late arrivals of the cotton and in consequence Steele, Miller & Co.'s answer was an evident proof to us of their good intention to expedite their shipments. The result of our confidence was that we moreover accepted drafts drawn by Steele, Miller & Co. for 2,000 bales between the 18th and 24th of February, 1910. (See my answer No. 18 in the direct examination.)

1115 Twenty-sixth cross-interrogatory:

State whether you permitted the swapping of bills of lading by Knight, Yancey & Company and what official of your bank permitted it to be done.

To the twenty-sixth cross-interrogatory he saith:

The Societe Generale has had no exchange of documents re. Knight, Yancey & Co.

Twenty-seventh cross-interrogatory:

State further what official of your bank permitted the substitution of bills of lading by Steele, Miller & Company. In answering this question, mention the exact transaction in which this proceeding took place.

To the twenty-seventh cross-interrogatory he saith:

On the 7th of December, 1909, the first bill of lading was handed to us by Scheuch & Co., together with a note, asking for the return of the corresponding through bill; these were kept back by one of our employees, who referred the matter to me some hours afterwards.

I myself, after having had from Scheuch & Co. the explanation which I have treated in my answer No. 21 of the direct examination, authorized the handing over of the through bill. On the same way I authorized the handing over of the two other through bills, each for 100 bales, which they asked for on the 14th of February and the 20th of April, after having previously remitted to us the two port bills bearing the same marks.

Twenty-eighth cross-interrogatory:

File as an exhibit to your deposition all correspondence, telegraphic or otherwise, which you had with the Compagnie Generale Transatlantique between January 1, 1910, and June 30, 1910, touching movements of cotton by Steele, Miller & Company and Knight, Yancey & Company. Submit the originals to the authority taking these depositions that he may compare them with the copies and certify the copies as being correct.

1116 To the twenty-eighth cross-interrogatory he saith:

From the 1st of January till the 13th of June.

1910, we did not have any telegraphic nor other correspondence with the Compagnie Generale Transatlantique concerning the movement of Steele, Miller & Co.'s cotton, but only concerning our claim against the Compagnie Generale Transatlantique, which was based on the fact that they omitted to ship our 400 bales on the "Louisiane" when there was enough room for same; the Compagnie Generale Transatlantique has, in our opinion, injustly [unjustly] retarded the shipment of our 400 bales, with the result that they have been comprised by the injunction which prohibited the exporting of the cargo on the "Texas."

I further join hereby certified copies of our letters to the Compagnie Generale Transatlantique of the 21st and the 26th of May, 1910, together with the answers of the said company, dated May the 25th and May the 30th, 1910. (Exhibits No. 173 to 176.)

Twenty-ninth cross-interrogatory:

Give the date that you exchanged the bills of lading attached to the drafts accepted by you for the four hundred bales of cotton marked Q M T A, Q P L H, R D F E, Q R T Y, for the custody bills of lading; give the hour of the day, the name of the individual who delivered the bills of lading and a copy of the entry made on your books of this transaction. Permit the authority taking these depositions to examine the original books, to the end that he may compare them with the copy and certify the copy as being correct. State whether or not you still hold both the through bills of lading and the custody bills of lading. If you answer that you do, state whether at the time of previous exchanges you surrendered the through bills of lading, and if you answer yes, explain why you considered it necessary to retain both original and through
1117 bills of lading at this particular time.

To the twenty-ninth cross-interrogatory he saith:

The custody bills for the 400 bales of cotton marked likewise have been handed to us on the 26th of April at about 3 o'clock in the afternoon; same were accompanied by a memo, and as on the previous occasion brought by an employee of Scheuch & Co., whom I do not know. I am able to give the hour, as I was informed of this remittance very soon afterwards, and then it was half past three in the afternoon. No

entry was made in our books on the 26th of April, neither for the three custody bills handed in previously. The correspondence which was exchanged between Scheuch & Co. and ourselves was sufficient for us not to loose [lose] trace of those remittances.

Contrary to the three previous advices remitting us the three custody bills in exchange for the corresponding through bills for the 300 bales of cotton, Scheuch & Co. did not ask us to hand them the through bills corresponding with the four custody bills which they handed to us on the 26th of April. I saw Scheuch & Co. on that occasion and I thought with them, considering circumstances, and awaiting developments, that the return of the through bills to America was not urgent. We held in our hands the through bills of the railway and the custody bills of the Compagnie Generale Transatlantique, both for one and the same merchandise, which justly belonged to us, and in consequence we were absolutely certain that nobody else besides ourselves would be qualified to claim and to receive the cotton.

Informed in the evening of the 23rd of April by Scheuch & Co. (see my answer to No. 25 of the direct examination) of the refusal on principle by bank in Bremen to accept drafts drawn by Steele, Miller & Co., I still hoped on the 26th of April that it was a matter of momentary difficulties and that the affair could be speedily settled. But still, out of
1118 prudence, I thought it desirable to keep the two different documents referring to the same parcel of cotton: the through bill stated that the cotton, marked Q M T A, was loaded on a wagon at Columbus on the 2nd of February, prior to the date of the corresponding draft, and having as destination Havre via New Orleans and the French Line; the custody bill stated that the same parcel Q M T A was remitted to the Compagnie Generale Transatlantique on the 15th of April or earlier, to be put on board the "Louisiane" and sent to Havre. In my opinion, the custody bill followed the through bill, as it is followed by a master's receipt, with this difference, however, that the custody bills could not have been obtained without giving a full guarantee.

But as I was convinced that Steele, Miller & Co. had told the truth when writing that they could not have obtained the custody bills if they had not given full guarantee, I thought that the Compagnie Generale Transatlantique would claim the

custody bills and corresponding through bills from us at the arrival of the steamship "Louisiane," so as to be able to put an end to or to return the caution or guarantee given by Steele, Miller & Co. to the Compagnie Generale Transatlantique or to the railroad.

I thought I acted prudently in provisionally keeping all the documents received and I did not think that this would have given use to the smallest inconvenience.

Thirtieth cross-interrogatory:

Attach to your depositions a copy of the charter and by-laws of your corporation. It may be that you do not understand the words charter and by-laws. What we desire you to attach is a copy of the authority by which your corporation exists, together with the rules of business of your corporation.

1119 To the thirtieth cross-interrogatory he saith:

I inclose herewith as exhibit No. 177 a copy of the articles of association of the Societe Generale. I specially draw your attention to article No. 2, paragraph No. 2, which permits the Societe Generale to buy and sell merchandise. That article has been added some years ago to fulfill a condition put by the Clearing House, who pretended that our statutes did not give the right to have buying and selling contracts booked in our name, operation such as those of Scheuch & Co. (See my answer to No. 8 direct examination.) We thought it absolutely necessary to have entries made like that for account of our clients, in order to guard ourselves against the risk of a fall in the price of merchandise which had been given to us as guarantee. From the point of view of the Clearing House, we are therefore buyers and sellers in our name, but in reality all these operations are for account of our clients, who are responsible to us for the final differencies.

Thirty-first cross-interrogatory:

Is it a custom of the banks doing business in France, and particularly your bank, to speculate in cotton, grain, sugar or other such commodities?

To the thirty-first cross-interrogatory he saith:

That question greatly surprises me. If every one of our 890 agencies were allowed to speculate in cotton, grains, sugar

and other commodities, it would lead to a regular mess, a deplorable and most extraordinary state of finances, which might endanger the existence of the Societe Generale, and would speedily lead to their ruin. Not only we do not speculate, out of reason, and out of duty, as we are not allowed to speculate, but we moreover refuse to assist all commercial speculations, and we are most afraid of having to do with clients who speculate, unknown to us. I absolutely believe
1120 that the principles which hold good with the Societe Generale are likewise adhered to by all the serious banks in France and particularly by all the banks represented or established in Havre.

Thirty-second cross-interrogatory:

Are you acquainted with the following institutions: Paul Chardin, Bank de Mulhouse, Comptoir d'Escompte de Mulhouse and Credit Havrais?

To the thirty-second cross-interrogatory he saith:

I know the House Paul Chardin from reputation. I am very well acquainted with the Banque de Mulhouse, the Comptoir d'Escompte de Mulhouse and the Credit Havrais.

Thirty-third cross-interrogatory:

If you answer yes, state whether you know if it is a custom of all, or any of them, to speculate in cotton, grain, sugar or other commodities by direct purchases from the American merchants and then protect these purchases by buying or selling cotton futures?

To the thirty-third cross-interrogatory he saith:

All that I can say about Mr. Paul Chardin, merchant, is that he is considered to be perfectly honest, of good financial standing and that he has not the reputation of being a speculator.

With regard to the above mentioned banks, Banque de Mulhouse, Comptoir d'Escompte de Mulhouse and Credit Havrais, I renew my declarations made in No. 31 and I am quite convinced that none of those banks had bought any merchandise for their own account directly from the United States, neither that they have the intention of doing so, just as little as the

Societe Generale has ever done same and they have neither any desire to do so.

Thirty-fourth cross-interrogatory:

If you answer that you purchased cotton or other commodities, state how many bales you have purchased in the last year, what facilities you have for receiving and storing such cotton. Give the name of the man or men in charge of your spot cotton department. Give the names of the parties from whom you have purchased cotton and the parties to whom you have sold cotton. Attach copies of all account sales and generally enlighten us as to the method of carrying out your cotton department.

1121

To the thirty-fourth cross-interrogatory he saith:

The Societe Generale has never bought cotton or other articles; we keep ourselves strictly to our vocation of bankers, which entails already enough risk, without adding to same the direct risks connected with merchandise business, and still less those entailed by speculation.

Thirty-fifth cross-interrogatory:

If you say you purchased other commodities in the open market and sold same in the open market, give a full statement of these speculations.

To the thirty-fifth cross-interrogatory he saith:

It is impossible to supply you with the statement concerning inexisting operations.

Thirty-sixth cross-interrogatory:

In the above styled cause you filed an affidavit in which you make oath as follows:

"Prior to the year 1909 the business of the Societe Generale with Schenck & Company was small and unimportant. In 1909 the bank extended its engagement d'importation with that firm to 5,000 bales of cotton; that is to say, it authorized that firm to have drafts drawn on it for the purchase price of cotton accompanied by documents giving it title to the cotton, provided drafts drawn outstanding at any one time should not exceed 5,000 bales. The arrangement included the sale of

futures in the name of the bank contemporaneously with the drawing of each draft and corresponding in amount and price with the cotton purchased. The bank had no concern with or knowledge of the contracts or arrangements between Scheuch & Company and the shippers of cotton, and extended no credit to the shippers."

Please state whether or not this statement is correct.

1122 To the thirty-sixth cross-interrogatory he saith:

The declaration taken from my affidavit is most certainly correct; but in order to avoid same being wrongly interpreted, it will be useful to add a short explanation to that last sentence, namely: * * * "and extended no credit to shippers."

If one wants to draw the conclusion from that that the Societe Generale has no confidence in the shippers, that they do not think they merit a credit and that it was the reason why the Societe Generale does not extend credit to shippers, one would then be giving an absolutely wrong and erroneous interpretation to my declaration; this I want to evade.

In my answer No. 4 to the direct examination, I have enumerated the various operations treated by the Societe Generale in Havre and I have mentioned the following:

"The Societe Generale does not accept, on principle, any draft referring to an importation which is not fully covered by goods; it results from that, that the Societe Generale does not make any uncovered advances concerning importations to their importing clients, as well as to the exporters in the United States and other foreign countries. We refuse to accept any draft concerning an importation which is not accompanied by a full set of documents."

Such is the rule of the Societe Generale: we can open credits to our Havre clients for their current affairs; in other words, we can make uncovered advances for a very short period, but we are not allowed to open foreign credits, and in consequence we did not extend any credits (in other words, no uncovered advances) to exporters of cotton, and all that is done on principle.

But that does not signify that we had no confidence in the cotton exporters Steele, Miller & Co., and that
1123 we thought that firm did not merit a credit. On the contrary, we had a very good opinion of that house.

which was based on the informations supplied by Scheuch & Co. in 1909 and in the beginning of the year 1910, and also on the fact that Steele, Miller & Co. delivered in Havre very fine cotton, which was easily placed, and that they reimbursed without delay the small differences in weight and quality which were sometimes claimed from them. We knew that it was often difficult and lengthy with some American exporters to get these differencies settled; we also knew that it has happened that certain exporters delivered inadvertently linters instead of good middling which has been bought, invoiced and financed by larger drafts than the cotton was worth, which caused a loss to merchants in Havre of 100 francs per bale, which was absolutely irrevocable, as the exporters had taken good care to disappear completely after that exploit; we also knew that Scheuch & Co. worked with other banks, who were perhaps more liberal in fixing limits for their engagements. We knew all that, and we did not hesitate to authorize Scheuch & Co. to have documentary drafts drawn by Steele, Miller & Co. on the Societe Generale up to 5,000 bales, and knowing that Scheuch & Co., with the assistance of the others [other] banks, could arrive at importing in this way from 15 to 20,000 bales of cotton from Steele Miller & Co., which would have resulted, had Steele, Miller & Co. shipped linters instead of the invoiced good middling, in the considerable loss to Scheuch & Co. of about 1 1/2 to 2 million francs, and they would not have been able to reimburse their bankers in full.

But we were not afraid that Steele, Miller & Co. would have acted likewise, we had confidence in them in the same way as we had confidence in their declarations made
1124 to Scheuch & Co., in January, 1910, and the fact we accepted their documentary drafts for such an important amount proves moreover that the Societe Generale was convinced that Steele, Miller & Co. merited a very good credit.

Thirty-seventh cross-interrogatory:

Affidavits made by the witnesses for the Credit Havrais, Bank de Mulhouse, Comptoir d'Escompte de Mulhouse and Paul Chardin and yourself set forth the following statement:

"On April 20th it was reported in Liverpool that Knight, Yancey & Company were in difficulties, and this report was known in Havre on April ...., 1910. There was no report

or rumor then in respect to Steele, Miller & Company. On Saturday evening, April 23rd, Scheuch & Company received from Bremen a telegram stating that a bank of that city refused to accept drafts of Steele, Miller & Company, and they communicated this to the Societe Generale with the statement that the refusal of the Bremen house was as a matter of precaution on account of the frauds of Knight, Yancey & Company, but without any knowledge that Steele, Miller & Company had acted in the same manner. We asked Scheuch & Company to cable Steele, Miller & Company for information. In the meantime, on April 26th, there arrived the said custody bills of lading, and, pending further information, we decided to hold both the custody bills of lading and the through railroad bills of lading. Afterwards on the evening of April 26th, a house at Havre received from New Orleans a cable announcing the failure of Steele, Miller & Company, but the next day that house received a cable from the same correspondent telling it not to reveal the telegrams of the day before because it had not been confirmed. Finally, on April 26th, Scheuch & Company received from Steele, Miller & Company advice by cable that they had suspended."

Please state whether this is correct.

To the thirty-seventh cross-interrogatory he saith:

The extract of the affidavit mentioned in that cross-question is the exact reproduction from the affidavit of the Societe Generale, and I want to point out that the following passage is not contained in the affidavits of the other banks, and that it only applies to the Societe Generale:

"In the meantime, on April 26th, there arrived
1125 "the said custody bills, and pending further infor-
"mation, we decided to hold both the custody bills
"of lading and the through railroad bills of lading."

After having made that observation, I think that the paragraph cited from the affidavit of the 3 other banks is quite correct, all the banks having had exactly the same information as the Societe Generale, all at very much the same time.

I think that the same is applicable to Mr. Paul Chardin, merchant, but this is an impression, not an affirmation. I only know Mr. Paul Chardin by name and reputation, he is not a client of the Societe Generale, and has never had any deal-

ings with us; I therefore cannot allow myself to judge the correctness of his declaration.

(Signed) PAUL DUBOIS.
(Signed) J. P. BEECHER,
[Seal] Commissioner.

1126 City of Havre,
Republic of France. ss.

I, J. P. Beecher, vice consul of the United States of America, at Havre, France, do certify that Elisee Paul Dubois, the witness, personally appeared before me on the 11th day of October, 1911, at 2 o'clock in the afternoon, at the Consulate of the United States at Havre, in the Republic of France, and, after being duly sworn, to testify the truth, the whole truth, and nothing but the truth, did depose to the matter contained in the foregoing deposition, and did, in my presence, subscribe the name and certify to the authenticity of the exhibits. I certify that I have subscribed my name to each half sheet thereof, and further certify that, according to cable instructions sent to Messrs. Scheuch & Co., of Havre, France, on September 4, 1911, by J. P. Blair, attorney, the attestations of each exhibit has, (in view of their great number,) been waived.

Aitness [witness] my hand and official seal the day and year above written.

(Signed) JOHN PRESTON BEECHER,
Vice Consul of the United States
of America at Havre, France.

Deposited in the postoffice at Havre, France, this 13th day of October, 1911.

(Signed) JOHN PRESTON BEECHER,
[Seal] Vice Consul of the United States
of America, at Havre, France.

(Twenty-four $2.50 American Consular Service Fee Stamps, each stamped across face with red ink, 11 Oct. 1911.)

Consular fee	$60
Copying, typing and clerk	35
Total	$95.

1127 EXHIBITS NOS. 1 TO 36 INCLUSIVE, ANNEXED TO DEPOSITION OF ELISEE PAUL DUBOIS.

Filed October 24th, 1911.

United States District Court, Eastern District of Louisiana.

J. A. E. Pyle, Trustee, etc.,
vs. No. 14,243
Texas Transport & Terminal Co., et al.

At the execution of a commission for the examination of witnesses in a case depending in the District Court of the United States for the Eastern District of Louisiana, wherein J. A. E. Pyle is complainant, and the Texas Transport and Terminal Company et als, are defendants, the annexed exhibits, numbered 1 to 177, were produced and sworn to by Mr. Elisee Paul Dubois, and subscribed by him at the time of his examination.

(Sig) E. P. DUBOIS.
(Signed) JOHN PRESTON BEECHER,
[Seal] Vice Consul of the United States of America at Havre, France, and Commissioner.

1128 Exhibits numbered 1 to 20, inclusive, being through bills of lading, custody bills of lading, original and duplicate insurance certificates, and invoices, omitted per instructions.

* * * * * * * *

1173 Scheuch & Co.
Havre.

Je/K.
Havre, April 26th, 1910.

Societe Generale,
E. V.
Gentlemen:—
Enclose we have the pleasure to remit you custody bill of lading for:

R. P. B. H.	100 B.
R. D. L. E.	100 "
Q. M. T. A.	100 "
Q. R. T. Y.	100 "
	400 B.

by steamer "Louisiane," for which you will please acknowledge receipt.

Receive, gentlemen, our most sincere salutations.

p. pro. SCHEUCH & CO.
GEO. FREBOURG.

14243. Exhibit No. 29.

1174 Exhibits numbered 30, 31, 32, and 33, being Custody Bills of Lading, omitted per instructions.

* * * * * * *

1182 Scheuch & Co.
Havre.

Havre, the 6th December, 1909.

Societe Generale,
E. V.

Gentlemen:—

We remit to you enclosed port bill of lading and duplicate for Q. H. E. C. 100 B. cotton expected by S/S "Mexico," for which you will please give us discharge.

In exchange, we beg you to send us the through bill of lading and duplicate concerning that mark so as to permit the return to America.

Receive, gentlemen, our sincere salutations.

(Signed) SCHEUCH.

14243. Exhibit No. 34.

1183 Memorandum of

Scheuch & Co.
25 de la Bourse Street.

Havre, February 14th, 1910.

Messieurs Societe Generale,
E/V.
Gentlemen:—
We remit you enclosed bill of lading for

S U T Y 100 Bales Cotton

Begging you to return to us the through bill of lading.
Accept, gentlemen, our sincere salutations.

p. pro. SCHEUCH & CO.
(Signed) GEO. FREBOURG.

Je/K.

14243. Exhibit No. 35.

1184, Scheuch & Co.
Havre.

Je/K.
Havre, April 20th, 1910.

Societe Generale,
E/V.
Gentlemen:—
Enclosed we have the pleasure to remit port bill of lading for

R. M. P. O. 100 B.
by s/s. "Honduras."

Requesting you to return us the through bill of lading and also to acknowledge receipt.
Accept, gentlemen, our most sincere salutations.

p. pro. SCHEUCH & CO.
(Signed) GEO. FREBOURG.

14243. Exhibit No. 36.

Statement of Drafts of Steele, Miller & Co., Accepted for Account of Scheuch & Co., Havre, up to Sept, 1st, 1909.

Amt. Drafts	Date Emission	Date Acceptance	Date Due	Quantities	Marks of Cotton
12,470.97	(1907) October 31st	November 12th	January 11th	200B/	R X D H—R L L B
5,977.81	do	do 14th	do 13th	100 "	O Z L P
6,209.26	November 7th	do 19th	do 18th	100 "	R E R E
6,110.12	do 9th	do 23rd	do 22nd	100 "	S T E N
8,949.16	(1909) August 16th	August 28th	November 26th	300 "	Q H E C
9,615.30	do 16th	do 28th	do 26th	300 "	Q C C M—Q E B C
12,306.97	do 16th	do 31st	do 29th	200 "	Q Q B K—R B Q E
6,086.08	do 18th	do 31st	do. 29th	100 "	R M O Z
9,109.70	do 21st	do 31st	do 29th	300 "	S P A O—R W A B
9,615.30	do 21st	do 31st	do 29th	300 "	O B A T
12,473.74	do 21st	do 31st	do 29th	200 "	R N P N—S S Q K
6,323.73	do 21st	do 31st	do 29th	100 "	Q A R X
12,337.45	do 21st	do 31st	do 29th	200 "	R L B O—S O K K
6,294.08	do 21st	do 31st	do 29th	100 "	R I N P
6,239.26	do 21st	do 31st	do 29th	100 "	R C R O
12,019.75	do 16th	do 31st	do 29th	200 "	S E A C—S S X X
12,015.40	do 16th	do 31st	do 29th	200 "	S K K W—S I N X
154,154.20				2,500	

14243.

1186 EXHIBIT No. 59.

Statement of Drafts Steele, Miller & Co., Accepted for Acct. Scheuch & Co., Havre, from the 1st of September, 1909, to May 4th, 1910.

Amt. of Drafts	Date of Acceptce.	Date of Maturity	Quantities.	Marks of Cotton
12,334.47	September 7th	December 6th	200	R P Q Q—R R R K
12,574.25	" 7th	" 6th	200	Q O K N—Q Q K X
12,500.00	" 7th	" 6th	200	R A F O—R I C C
6,279.15	" 7th	" 6th	100	Q R Q A
12,410.05	" 7th	" 6th	200	R O A A—Q O T T
12,448.15	" 7th	" 6th	200	R L E—R K O K
6,148.93	" 7th	" 6th	100	R R B B
6,265.36	" 7th	" 6th	100	Q P O K
12,503.40	" 7th	" 6th	200	Q A E Z—R O M E
12,500.00	" 7th	" 6th	200	R C D O—S E A O
12,179.26	" 7th	" 6th	200	R E E N—R O T L
12,500.00	" 7th	" 6th	200	S P O E—S P R K
12,079.26	" 7th	" 6th	200	R O A W—S K O M
9,615.30	" 7th	" 6th	200	S K P C—S C O E
8,817.94	" 7th	" 6th	100	S C B I
12,363.48	" 7th	" 6th	200	R B O T—R K P T
12,510.75	" 9th	" 8th	200	Q D O F—R B C O
7,300.85	November 9th	February 7th	100	S C A N
7,311.35	" 9th	" 7th	100	S E R N
7,283.40	" 9th	" 7th	100	S V T Y
7,390.96	" 9th..	" 7th.	100	R E N T
7,386.54	" 9th.	" 7th	100	R I E T
7,472.15	" 9th	" 7th	100	R E R I
7,499.30	" 9th	" 7th	100	R A C Y
7,354.42	" 9th.	" 7th	100	R H I N
7,482.50	" 9th	" 7th	100	R O B O
7,493.65	" 9th	" 7th	100	R H O T
7,527.27	February 18th	May 19th	100	Q V A E
7,700.96	" 18th	" 19th	100	Q V N N
7,365.21	" 18th	" 19th	100	S D O H
7,368.55	" 18th	" 19th	100	S A K H
7,424.55	" 21st	" 23rd	100	O M T A
7,439.26	" 21st	" 23rd	100	O P L M
7,367.18	" 21st	" 23rd	100	R D F E
7,430.33	" 21st	" 23rd	100	Q R T Y
7,340.16	" 21st	" 23rd	100	Q D N B
7,680.00	" 21st	" 23rd	100	R A M V
7,597.33	" 21st	" 23rd	100	Q A N T
7,446.28	" 21st	" 23rd	100	S R G B
7,621.75	" 21st	" 23rd	100	R F K L
7,580.12	" 21st	" 23rd	100	Q R F H
7,614.87	" 21st	" 23rd	100	R R S K
7,614.42	" 21st	" 23rd	100	Q T N E
7,391.98	" 24th	" 25th	100	R V N K
7,367.43	" 24th	" 25th	100	R M P S
7,401.82	" 24th	" 25th	100	Q S T R
7,407.00	" 24th	" 25th	100	R N P O
409,691.55				

14243.

Exhibit No. 50.

1187 Societe Generale.

Societe Anonyme
Capital 400,000,000 De Francs.

Agence du Havre
2 & 4, Place Carnot.

Telegrammes
Sogenere-Havre.

Havre, December 7th, 1909.

Messrs. Scheuch & Co.,
E/V.

Gentlemen:

We have the honor to acknowledge receipt of your letter of the 6th inst., and conforming to your request, we send you enclosed the two copies of through bill of lading concerning the Q.R.E.C. 100 bales cotton expected by s/s "Mexico."

Requesting that you adhere to the good rule and acknowledge receipt, we present you, gentlemen, our sincere salutations.

For the Director of the Agency.
(Signed) DOUVIZIE.

14243. Exhibit No. 60.

1188 Memorandum.

Societe Generale.
Le Havre.

Havre, February 15th, 1910.

To Messrs. Scheuch & Co.,
E/V.

In answer to your note of the 14th inst., we return you enclosed the through bills of lading for S. U. T. Y. 100 B. cotton.

Accept, gentlemen, our earnest salutations.

(Signed) A. GELARD.

14243. Exhibit No. 61.

1189 Memorandum.

Societe Generale.
Le Havre.

Havre, April 21, 1910.

To Messrs. Scheuch & Co.,
E/V.

Enclosed we return you through bill of lading in duplicate in regard to R. N. P. O. 100 bales cotton and acknowledge receipt of the port bill of lading for the same marks by s/s "Honduras."

Accept, gentlemen, our earnest salutations.

p. pro. SOCIETE GENERALE.
(Signed) A. GELARD.

14243. Exhibit No. 62.

1190 DEPOSITION OF EMILE LEVEL, TAKEN UNDER COMMISSION OUT OF THE CLERK'S OFFICE, UNITED STATES DISTRICT COURT, EASTERN DISTRICT OF LOUISIANA, ON JULY 17TH, 1911, IN THE ABOVE ENTITLED AND NUMBERED CAUSE, ON BEHALF OF THE COMPTOIR D'ESCOMPTE DE MULHOUSE, DEFENDANT.

Filed October 24th, 1911.

J. A. E. Pyle, Trustee,
vs. No. 14241
Texas Transport & Terminal Company, et als.

1191 Direct Examination.

United States District Court, Eastern District of Louisiana.

J. A. E. Pyle, Trustee,
vs. No. 14241
Texas Transport & Terminal Company, et als.

Interrogatory No. 1:

Please state your name, age, residence and occupation. How long have you been engaged in your present occupation?

EMILE LEVEL, of No. 20 Rue Le Peletier, Paris, France, aged 34 years, being duly and publicly sworn, pursuant to the directions hereto annexed and examined, doth depose and say as follows:

To the first interrogatory he saith:

Emile Level, age 34, formerly director of the Havre branch of the Comptoir d'Escompte de Mulhouse, and, since July 1st, 1911, the director in Paris of the branches of the same firm.

I have been manager of the Havre branch of the Comptoir d'Escompte de Mulhouse from August 1st, 1909, to July 1st, 1911.

Interrogatory No. 2:

Do you know the Comptoir d'Escompte de Mulhouse, a defendant in the above entitled cause? If so, state whether or not it is an incorporated institution. In what country was it incorporated? What is the nature of its business? In what place or places has it a business domicile? What is its capital?

To the second interrogatory he saith:

I have been employed by the Comptoir d'Escompte de Mulhouse from the date above (August 1st, 1909). The Comptoir d'Escompte de Mulhouse is an incorporated company, formed under German law, incorporated at Mulhouse (Alsatia), established in 1848, and working at the present moment on 35,000,000 fcs. capital. The firm has branches at Mulhouse and Colmar (Alsatia), and in France, at Paris, Dijon, Marseilles, Lyons, le Havre, Etc.....It has to do with all affairs generally concerning banking, dis-
1192 counts, opening of accounts current, opening credit, loans on goods, documentary credits, etc.

Interrogatory No. 3:

Are you connected with the Comptoir d'Escompte de Mulhouse? If so, in what capacity and for how long? State generally the nature and scope of your duties.

To the third interrogatory he saith:

Since August, 1st, 1909, I have been employed in the Comptoir d'Escompte de Mulhouse, first as manager of the Havre branch until July 1st, 1911, when I was called in the same firm to the post of central director of the branches in Paris. During my management in Havre, as well as now, I had, and have still, all the necessary powers for controlling all the affairs in that branch.

Interrogatory No. 4:

If, in answer to previous interrogatories, you have said that the Comptoir d'Escompte de Mulhouse was engaged in the banking business in Havre, France, state how long it has been so engaged and state in a general way the nature and extent of such business. Did it include the furnishing and advancing

of funds for the purchase of cotton and the taking and holding of the title to said cotton?

To the fourth interrogatory he saith:

The Comptoir d'Escompte de Mulhouse has been engaged in banking affairs in Havre ever since April, 1907, and from that time on it has never stopped negotiating, with the traders in the market, all the transactions current in that place, such as discounting bills, opening documentary credits, loans on goods, etc.....

It has negotiated, and still daily negotiates, transactions consisting in reimbursement of cotton from America, accepting for the account of the Havre buyers on their asking, the drafts on itself drawn by American cotton exporters whilst taking for itself as security, the documents attached
1193 to the said drafts.

I annex to this deposition a report concerning our bank's business for 1910, together with a relation of its history as exhibits No. 1 & 2.

Interrogatory No. 5:

Do you know the firm of Scheuch and Company, of Havre, France? How long have you known said firm? Who are the individual members thereof? State, if you know, the business in which said firm was engaged during the time you have known it.

To the fifth interrogatory he saith:

I have known the firm of Scheuch & Co. since our establishment in Havre.

Its members are MMrs. Ferd. Scheuch & Albert Schilling.

Since it is known to me, that concern has always been engaged in the business of importing American cotton and that under the same conditions under which all similar firms in the Havre market manage it.

Interrogatory No. 6:

State, if you know, the general reputation enjoyed by said firm at Havre for business integrity and fair dealing from the time you first knew it down to and including May 7, 1910. State, if you know, its general reputation, during the same

period, as to its solvency and financial responsibility. What sort of credit did it have at Havre?

To the sixth interrogatory he saith:

Scheuch & Co. enjoyed in the Havre market and [an] excellent reputation as to integrity in business and the fair execution of agreements, a reputation which it never ceased to enjoy.

As for its financial situation, it was estimated at between 7 and 800,000, and good credit was granted to it on the market. That credit consisted especially in accepting for its account American drafts against shipments of cotton, acceptances for which the banks kept as security the documents attached to the drafts and representing the cotton.

Interrogatory No. 7:

How was said firm regarded during said period as to its financial responsibility and business integrity by the Comptoir d'Escompte de Mulhouse and yourself. State
1194 whether or not during said period you became aware of anything which gave you any cause to doubt the solvency or honesty of said firm.

To the seventh interrogatory he saith:

The opinion entertained both by the Comptoir d'Escompte de Mulhouse, and myself about Scheuch & Co., as to their honorability and solvency was exactly that which I have just mentioned above in answering the preceding question. We have never come to know anything, during the whole course of our relations, that could modify our good opinion about that firm.

Interrogatory No. 8:

During said period did your firm have any business arrangements or dealings with the said Scheuch and Company? If yes, please give a clear, full statement setting forth such business arrangements or dealings.

To the eighth interrogatory he saith:

The business arrangements we had with Scheuch & Co. during our relations were the following:

MMrs. Scheuch & Co. gave us to their American sellers

as the domicile of reimbursement for the documentary drafts which the latter had to furnish as counterpart for their shipments of cotton to Scheuch & Co., and we accepted those drafts for the account of Scheuch & Co. and with their authorization, against the delivery into our hands as security of the documents attached to the said drafts. Those documents remained in our hands until they were, after arrival of the ships carrying the cotton, replaced as security in our hands by the cotton itself, when that cotton was itself sold by Scheuch & Co.; we delivered it to the buyers against the sum owed by them, which they paid to us.

Interrogatory No. 9:

If, in answer to previous interrogatory, you have stated that the Comptoir d'Escompte de Mulhouse authorized Scheuch and Company to have drafts drawn on said bank by that firm's American customers for the purchase
1195 price of cotton, state, if you have not already done so, whether the arrangements provided that such drafts should always be accompanied by documents which would give the bank title to the cotton described in the draft.

State whether or not the Comptoir d'Escompte de Mulhouse would have authorized the drawing of said drafts or would have accepted the same if it had not believed that on acceptance it acquired title to and possession and control of the cotton described in the drafts.

What arrangement, if any, did the said bank have with Scheuch and Company in respect to the sale of futures in connection with the drawing or acceptance of any such drafts? Explain in whose names futures were sold and what was the purpose of such sale of futures.

To the ninth interrogatory he saith:

The authorization we gave Scheuch & Co. to make their American friends draw on us, as counterpart for their shipments of cotton, was never understood but for American drafts, accompanied by documents giving our bank title to the cotton described in the drafts. And we should never have either permitted or accepted those drafts if we had not thought that on acceptance we acquired title to and possession and control of the cotton described in the drafts.

As for the sales of futures made as counterpart to such acceptances, the proceedings were such as follow:

Scheuch & Co., according to our arrangements with them, must always order sale, in our name, of a quantity of futures corresponding to the quantity of cotton for which we agreed to accept the American drafts they indicated to us, and those sales of futures were always made by the care of Scheuch & Co., but in our name and with our signature. The purpose of such sales of futures was to protect our bank against risks liable to result from falling off of cotton from the price of importation.

1196 Interrogatory No. 10:

State whether or not the Comptoir d'Escompte de Mulhouse had any interest in or knowledge of the contracts or arrangements between Scheuch and Company and the shippers of the cotton covered by such drafts.

State whether or not the said bank extended or intended to extend any credit to said shippers of the cotton.

To the tenth interrogatory he saith:

The Comptoir d'Escompte de Mulhouse never had any knowledge of the contracts or arrangements between Scheuch & Co. and the shippers of the cotton covered by such drafts, and the Comptoir d'Escompte de Mulhouse never extended or intended to extend any credit to such shippers of the cotton.

Interrogatory No. 11:

Do you know the firm of Steele, Miller and Company or any of its individual members? What is the nature or extent of your acquaintance with said firm or its individual members?

To the eleventh interrogatory he saith:

We had long known Steele, Miller & Co. by name without having ever had the opportunity of getting personally acquainted with any of its members.

We never had relations of any sort with Steele & Miller and went no further than accepting their drafts for the account of Scheuch.

Interrogatory No. 12:

While the arrangements aforesaid existed between the

Comptoir d'Escompte de Mulhouse and Scheuch and Company, what knowledge of or interest in the contracts or arrangements between Scheuch and Company and Steele, Miller and Company did said bank have? State whether or not said bank ever extended or intended to extend any credit to the said Steele, Miller and Company.

To the twelfth interrogatory he saith:

The Comptoir d'Escompte de Mulhouse never had any knowledge of the arrangements existing between Steele, Miller and Scheuch, never did the Comptoir d'Escompte de Mulhouse intend to extend credit in the slightest way to Steele, Miller; the arrangements between the Comptoir d'Escompte
1197 de Mulhouse and Scheuch were those explained out in our answer above to question No. 8.

Interrogatory No. 13:

Please give the date or dates or dates of the first draft or Steele, Miller and Company which were accepted by the Comptoir d'Escompte de Mulhouse under the aforesaid arrangements with Scheuch and Company. Give also the date or dates of the last of such drafts of Steele, Miller and Company accepted by the Comptoir d'Escompte de Mulhouse. Please state the total number of bales of cotton during said period thus covered by the drafts of Steele, Miller and Company accepted by the Comptoir d'Escompte de Mulhouse.

To the thirteenth interrogatory he saith:

The first two drafts of Steele, Miller & Co. for the account of Scheuch & Co. amounted to fcs. 14,090.13, and fcs. 28,268.55. They were accepted on July 28th, 1908, falling due on September 26th, 1908. The last draft was accepted on February 18th, 1910, for fcs. 39,497.25, falling due May 19th, 1910.

Interrogatory No. 14:

Did the Comptoir d'Escompte de Mulhouse pay at maturity all said drafts of Steele, Miller and Company accepted by it? Did it receive all the cotton described in said accepted drafts? If not, please state the number of bales not received and the marks thereof, and the dates and amounts of the drafts drawn

against the same. For the purpose of this question and answer, treat the one hundred bales of cotton concerned in this suit as cotton not received.

To the fourteenth interrogatory he saith:

The Comptoir d'Escompte de Mulhouse paid at maturity all the drafts drawn by Steele, Miller & Co. and accepted by itself. It has received all the bales of cotton described in the documents which accompanied those drafts, the following quantities being accepted:

	Date of acceptance.	Amounts.	Date of Maturity.	Marks.	Number of bales.
1910	12 Fevrier	38,148.45	13 May	R S P C	100 "
	14 "	38,176.25	15 "	R M I S	100 "
	" "	37,520.75	" "	R A I L	100 "
	" "	37,857.—	" "	Q M P A	100 "
	16 "	38,571.80	17 "	Q A S P	100 "
	" "	37,353.35	" "	S P R D	100 "
	" "	38,970.70	" "	R H G A	100 "
	" "	39,564.65	" "	Q B T K	100 "
	18 "	39,479.25	19 "	Q O J L	100 "
	12 "	37,097.55	13 "	R B T R	100 "

Interrogatory No. 15:

With the exception of the cotton described in answer to the last interrogatory as not received, did Steele, Miller and Company perform their obligations in respect to the other drafts and shipments of cotton?

To the fifteenth interrogatory he saith:

Excepting the cotton described above as never received Steele, Miller and Co. performed all their obligations concerning the other drafts and shipments of cotton.

Interrogatory No. 16:

This is a suit in which J. A. E. Pyle, trustee in bankruptcy of Steele, Miller and Company, is suing to recover one hundred bales of cotton, or the value thereof, on the ground that the same were transferred by Steele, Miller and Company, while insolvent, to Scheuch and Company or the Comptoir d'Escompte de Mulhouse with the intent to prefer Scheuch and Company or the Comptoir d'Escompte de Mulhouse or both of them—the cotton in question being marked and numbered as follows:

100 bales of cotton marked R B T R 1/100

Please state whether the Comptoir d'Escompte de Mulhouse ever accepted any draft drawn by Steele, Miller and Company against cotton so marked and numbered. If yes, please state when and by whom said draft was presented for acceptance and the date of acceptance.

What documents were attached to said drafts when presented for acceptance? What became of said documents when the draft was accepted? If you say that they were delivered to the acceptor of the draft, state whether or not they have since remained in its possession or control.

1199 Has the draft since been paid? If so, when and by whom?

Please annex as part of your answer to this interrogatory the said draft; and if you have answered that there were attached thereto bills of lading, insurance certificate and invoice, please likewise annex to said draft the bill of lading, insurance certificate and invoice attached thereto.

To the sixteenth interrogatory he saith:

The Comptoir d'Escompte de Mulhouse accepted on February 12th, 1910, a draft of fcs. 37,097.55, accompanied by documents for: 100 bales of cotton R B T R 1/100.

This draft was presented for acceptance by Credit Lyonnais and was accepted by the Comptoir d'Escompte de Mulhouse, on Feb. 12th, 1910.

To this draft were attached:

1	Bill of lading	(which we annex to this
1	Insurance certificate	(deposition under No. 9
1	Invoice	(to 12.

Which documents were delivered to the Comptoir d'Escompte de Mulhouse after its acceptance of the above draft of fcs. 37,097.55 and have remained in its possession ever since.

The above draft of fcs. 37,097.55 was paid by the Comptoir d'Escompte de Mulhouse at maturity, i. e., on May 13th, 1910, within the hands of the Credit Lyonnais.

Interrogatory No. 17:

State whether or not the said bank had any reason at the time for not believeing that bill of lading attached to the draft was genuine. What was the belief of the bank on the subject? What if any, reason had the bank at the time for not believing that the cotton described in the said draft and bill of lading had been actually shipped and was on the way? What was the belief of the bank on the subject?

What was the belief of the bank in respect to the transfer to it of said bill of lading and its possession thereof being sufficient to give it possession and dominion over
1200 said cotton and entitling it to receive the same on its arrival?

To the seventeenth interrogatory he saith:

The Comptoir d'Escompte de Mulhouse had no reason, at time of acceptance, for believeing that the through bill of lading, attached to said draft, was not genuine, and it felt sure, on the contrary, that the same document was genuine and gave it and [an] absolute right for taking as security the cotton described which would surely come into its possession afterwards. Had the Comptoir d'Escompte de Mulhouse, had

any other belief, of course it would never have accepted the said draft.

Interrogatory No. 18:

If, in answer to previous interrogatory, you have stated that the bank believed that said bill of lading was genuine, that the cotton described therein and in the draft had been actually shipped and was on its way to Havre, and that the transfer to it of said bill of lading and its possession thereof gave it possession of and dominion over said cotton and entitled it to receive the same on its arrival, state what effect said beliefs had upon the action of the bank in accepting said draft. If the bank had not entertained such beliefs, would it have accepted, or would it have refused to accept, said draft?

To the eighteenth interrogatory he saith:

As we have just said, the Comptoir d'Escompte de Mulhouse would never have accepted the said draft if it had had the slightest doubt as to the documents being genuine, but its firm belief was that this document was genuine and that the cotton described in it would regularly come into its possession as had been the case in all preceding affairs.

Interrogatory No. 19:

Did said bank ever receive any bill of lading issued by the Compagnie Generale Transatlantique covering one hundred bales of cotton, corresponding with the marks and
1201 numbers of the lot of one hundred bales of cotton above referred to?

If yes, state when and how it received said bill of lading and whether a letter or note accompanied the same. Were there two sets of said bill of lading? State what has become of the original? Annex the other set of said bill of lading to your answer to this interrogatory. Annex also the letter, if any accompanied the bill of lading, and state whether it is truly the letter which you received at the time, and from whom it was received.

In whose possession and control has been the said bill of lading of the Compagnie Generale Transatlantique since said bank received the same?

In whose possession or control has been the bill of lading

attached to the said draft since the said bank received the same?

To the nineteenth interrogatory he saith:

The Comptoir d'Escompte de Mulhouse did receive from Scheuch & Co. a custody bill of lading issued by the Cie Generale Transatlantique covering:

100 Bales of Cotton R B T R

Which bill of lading was delivered to it with a note from Scheuch & Co., dated May 7th, 1910, which I annex as exhibit No. 13.

This bill of lading has remained in our hands, ever since its delivery by Scheuch, and so did the through bill attached to the draft. Those papers constituted, for us, not two sets of bills of lading for the same merchandise, but the through bill and the document for shipment or bill of lading for sea trade which are always sent to the receiver, it is thus we did consider them.

I annex to this deposition MM. Scheuch & Co.'s note, to which I refer, as exhibits No. 3.

Interrogatory No. 20:

At the time the bank received the said bill of lading of the Compagnie Generale Transatlantique, hereafter
1202 called the custody bill of lading, did you or the bank know that said bill of lading attaches to the draft was not genuine, but was forged or bogus?

Did you or the said bank know or believe at the time that said custody bill of lading represented cotton acquired and shipped by Steele, Miller and Company, subsequently to the drawing and forwarding of said draft and the said attached bill of lading, or did you and the bank believe that said custody bill of lading represented the same cotton as the bill of lading attached to the draft apparently represented?

What knowledge or information had you or the said bank at any time prior to the receipt of said custody bill of lading that Steele, Miller and Company intended to procure and forward to the bank said custody bills of lading?

It is charged on behalf of the complainant that at some time subsequent to the date of said draft and the attached bill of

lading Steele, Miller and Company acquired and assembled one hundred bales of cotton, caused the same to be marked and numbered to correspond with the marks and numbers described in said draft, and caused the same to be shipped to New Orleans, and thence by steamer of the Compagnie Generale Transatlantique to Havre, being the same cotton represented by the said custody bill of lading. State what knowledge or information you or the said bank had of these alleged acts of Steele, Miller and Company at the time the bank received said custody bill of lading.

To the twentieth interrogatory he saith:

At the time when the Comptoir d'Escompte de Mulhouse received the custody bill from the Cie Generale Transatlantique we did not think the bill of lading attached to the draft might be forged or bogus; we simply thought that this custody bill naturally followed the through bill of lading already in our hands, and I never had any thought nor had the Compagnie d'Escompte de Mulhouse either that the cotton cov-
1203 ered by this custody bill might not be the same as the cotton described in the through bill of lading already in our possession. We were absolutely ignorant of the facts alleged to-day by the trustee.

Interrogatory No. 21:

Please state whether on any prior occasion or occasions the said bank had received similar custody bills of lading purporting to represent the same cotton covered by through bills of lading attached to drafts for the price of the cotton, which had been previously accepted by the bank. If yes, state on what occasions, and what, if any, explanations were given, and whether the same were believed by the bank. Please answer this question fully.

What effect had such previous experience and explanation in causing the said bank to suspect or not to suspect fraud or wrong on the part of Steele, Miller and Company when it received said duplicating custody bill of lading covering the said one hundred bales of cotton?

To the twenty-first interrogatory he saith:

Several times already the Comptoir d'Escompte de Mulhouse had received before from Scheuch & Co. similar cus-

tody bills of lading, so that we thought at this moment that those custody bills, as a matter of course. followed the through bills attached to the drafts accepted by the Comptoir d'Escompte de Mulhouse, and in fact all the cotton so represented by the custody bills was actually received by us, excepting of course the 100 bales which are the object of the present suit. These custody bills really are sea-trade bills of lading which prove that the goods have been shipped.

Interrogatory No. 22:

State. if you know, when and how the said bank, or any representative thereof, learned for the first time that the said bill of lading attached to the said draft was forged or bogus, or was claimed to be forged or bogus.

State, if you know, when and how the said bank,
1204 or any representative thereof, learned for the first time that the said custody bill of lading did not cover, or was claimed not to cover, cotton shipped at the date of said bill of lading attached to said draft, but covered, or was claimed to cover, cotton subsequently acquired and shipped by Steele, Miller and Company.

To the twenty-second interrogatory he saith:

It was not until Steele, Miller's, trustee stopped the SS. "Texas" that the Comptoir d'Escompte de Mulhouse grew suspicious about the genuineness of the through bills of lading, but it kept on feeling positively that the custody bills of lading which were delivered to it afterwards actually represented the cotton against which it had accepted Steele, Miller's, draft; it was only by the demands of Steele, Miller's, trustee in the present affair that it understood the trustee and another opinion about that.

Interrogatory No. 23:

It is charged by complainant that at the time Steele, Miller and Company delivered the cotton covered by the said custody bill of lading to the Compagnie Generale Transatlantique or at the time it forwarded the said custody bill of lading to Havre, or at the time the same came into the physical possession of the Comptoir d'Escompte de Mulhouse. the said bank knew or ought to have known that Steele, Miller and Com-

pany intended thereby to prefer said bank over their other creditors.

Please state whether such charge is true at any of said times, and give the reasons or facts upon which your answer is based.

To the twenty-third interrogatory he saith:

The Comptoir d'Escompte de Mulhouse could never have any thought at any moment that by the delivery of the custody bills of lading Steele, Miller, might have intended to prefer the Comptoir d'Escompte de Mulhouse in any way;
1205 we were naturally brought to think on the contrary that Steele, Miller, remained within the limits of the engagement they had taken to deliver to us the cotton for which we had given our acceptance, and we could not see anything in that which might be the sign of any preference in our favor.

Interrogatory No. 24:

When the Comptoir d'Escompte de Mulhouse received the said custody bill of lading, did it know or believe that it was thereby receiving an interest or right in or to the cotton purporting to be covered thereby in addition to what it believed it already had as acceptor of the said draft and the holder of the said bill of lading attached thereto.

To the twenty-fourth interrogatory he saith:

When the Comptoir d'Escompte de Mulhouse, received said custody bill of lading, it simply thought that this document followed naturally the through bill of lading it possessed already; which bill he thought then was in itself sufficient to make firm his right over the cotton.

Interrogatory No. 25:

Please state fully and in detail the extent and nature of the knowledge or information of the Comptoir d'Escompte de Mulhouse as to the solvency or insolvency of Steele, Miller and Company at the time it accepted said draft, at the date of said custody bill of lading and at the date when the same came into the actual physical possession of said bank. Give the nature, extent and sources of the bank's information on the

subject from day to day from the date of the reported failure of Knight, Yancey and Company.

If, in answer to previous question, you state that on April 29th, 1910, a cable was received by Scheuch and Company from Steele, Miller and Company announcing that the latter had suspended payment, state what knowledge or information the said bank then had as to the assets or liabilities of Steele, Miller and Company or as to the sufficiency of their property at a fair valuation to pay their debts.

1206

To the twenty-fifth interrogatory he saith:

At the time when the Comptoir d'Escompte de Mulhouse accepted the said draft of Steele, Miller, it was absolutely ignorant or [of] what difficulties may have been those of Steele, Miller, about whom nobody spoke unfavorably. When the said custody bill came into the hands of the Comptoir d'Escompte de Mulhouse, it was known indeed that Steele, Miller, had suspended payment, but the delivery of this document by Scheuch & Co. at that date was only the consequence of its having been sent by Steele, Miller, to Scheuch, Miller, to Scheuch before their suspending payment, and in no way could the Comptoir d'Escompte de Mulhouse have any thought that this delivery might constitute a preference of any kind, since it believed the custody bill of lading only followed in a natural way the through bill of lading which was already in its hands and constituted its security.

Interrogatory No. 26:

If, in answer to previous interrogatories, you have stated that the bank believed that the custody bill of lading represented the same cotton which had been paid for by the acceptance of the said drafts, and which the bank was entitled to receive, state what effect, if any, knowledge of the insolvency of Steele, Miller and Company by the bank at the date of said custody bill of lading or at the date when it came into the physical possession of the bank would have had upon the belief of the bank that it was receiving only cotton to which it was entitled.

To the twenty-sixth interrogatory he saith:

The Comptoir d'Escompte de Mulhouse having always considered the custody bills followed in a natural way the through

bills already in its possession, had not to concern
1207 itself with Steele, Miller's, situation at the time of the said custody bill's deliver, and, in fact, it did not concern itself about it.

Interrogatory No. 27:

State, if you know, the financial condition of Scheuch and Company and the individual members of said firm, and how long they have been in such financial condition.

To the twenty-seventh interrogatory he saith:

The financial position of Scheuch & Co. at the moment Steele, Miller, suspended payment was estimated by us at between 7 and 800,000 fcs., one half for each partner. It is evident that a part of this position came from their profits in the last seasons of cotton imports.

Interrogatory No. 28:

There has been offered in evidence on behalf on [of] the complainant in this cause a copy of a publication at Havre called the Bulletin de Correspondence, of date April 27, 1910, which contains the following:

"Nous avons parle, hier, d'une nouvelle faillite aux Estats-Unis. A ce propos, on a recu, de Liverpool, le telegramme suivant; Plusieurs Maisons de cotton seraient atteintes par la faillite de la Maison Steel, Miller and Co. de Memphis, qui faisait de nombreuses affairs avec l'Europe;"

and a copy of the same publication, dated April 28, 1910, which contains the following:

"Cette Semaine, les marches ont ete influences par deux sortes d'evenments. En, premier lieu, on a appris la fallite de deux Maisons d'exportation des Estats-Unis; si les details donnes ne pouvaient que semer la mefiance et, par suite, amener un ratentissement des affairs, par contre, ilsdevaient contribuer au raffermissement de cours, puisqu'ils indiquaient law possibilite de ne pas entre live de coton achete, du moins-dans le delais prevus. Il est a Esperer, d'ailleurs, qu'l y a de l'exageration dans toutes les rumeurs mises en circulation et que ce qui vient de se passer aura surtout pour resultat de

faire rechercher les movens qui assureront une plus grande securite a ceux qui doivent importer du coton."

Please state whether the quoted paragraphs from said paper or either of them was read or known at the time by you or any representative of the Comptoir d'Escompte de Mulhouse. Please state, if you know, any reports or information which came to you or the Comptoir d'Escompte de Mulhouse at the time of said publication which tended to confirm or
1208 to discredit, or cast doubt upon the correctness of the statements in said quoted paragraphs.

To the twenty-eighth interrogatory he saith:

The articles mentioned came to our knowledge at that time, but they did not modify in any manner our firm belief that the 100 bales R B T R shipped on board the SS Texas actually covered our acceptance.

Interrogatory No. 29:

There has been offered in evidence on behalf of the complainant in this cause a copy of a publication called the Liverpool Daily Post and Liverpool Mercury of date April 27th, 1910, which begins with the following head-lines:

"Cotton Market Outlook
Another American Firm
Suspends Payment
Disturbing Succession of
Unsettling News
The Knight, Yancey, Position
Losses Smaller Than Originally
Feared;".

and the first paragraph is as follows:

"The Liverpool cotton market has received further shocks to-day, first, by the alarming reports of new crop damage from frost, which many of the morning papers treated in 'scare' fashion; and later, by the statement that another American firm, Mess. Steele, Miller & Co. of Memphis, had suspended payment. Liverpool, we understand, is not largely affected by the failure, the losses falling chiefly on Bremen importers."

Please state whether the above article from said paper was read or known at the time by you or any representative of the Comptoir d'Escompte de Mulhouse. Did you or any representative of the said bank receive any reports or information about the time of said publication which tended to confirm or to discredit and cast doubt upon the correctness of the statements in said quoted paragraph. If so, state, if you have not already done so, what were said reports or information.

1209 To the twenty-ninth interrogatory he saith:

We give this question the same answer we gave to above question No. 28.

Interrogatory No. 30:

Has the Comptoir d'Escompte de Mulhouse any available means to be reimbursed or paid the drafts against said 100 bales of cotton, except through the sale of the said cotton in controversy in this suit?

To the thirtiest [thirtieth] interrogatory he saith:

The Comptoir d'Escompte de Mulhouse has no means, else than winning in the present action, to be reimbursed for having paid the draft of fcs. 37097.75 it accepted, as Scheuch & Co. themselves find it impossible, on account of same action, to refund the Comptoir d'Escompte de Mulhouse.

Interrogatory No. 31:

Do you know, or can you set forth, any other matter or thing which may be a benefit or advantage to the parties at issue in this cause, or either of them, or that may be material to the subject of this your examination or the matters in question in this cause? If yea, set forth the same fully and at large in your answer.

To the thirty-first interrogatory he saith:

The Comptoir d'Escompte de Mulhouse cannot add anything to the different indications which have just been given; it is bound to emphasize that it treated the whole affair with absolute good faith and remained fully convinced to the last moment that it possessed a valid security, having the documents against the delivery of which it had given its acceptance.

I affirm that Messrs. Scheuch & Co. never reimbursed to us the drafts for 1000 bales of cotton that are missing completely to us; the drafts for the said 100 bales cotton are included in the debt of the a/c of Messrs. Scheuch & Co.

(Signed) E. LEVEL,
(Signed) J. P. BEECHER, [Seal]
Commissioner.

1210 Cross-Examination of EMILE LEVEL.

First cross-interrogatory:

Please state whether the Comptoir d'Escompte de Mulhouse has an agent within the City of New Orleans, State of Louisiana, or within the Eastern District of Louisiana.

To the first cross-interrogatory he saith:

The Comptoir d'Escompte de Mulhouse has no agent either within the City of New Orleans or within the United States of North America.

Second cross-interrogatory:

State if your authorizations to Scheuch & Company to have drafts drawn on the Comptoir d'Escompte de Mulhouse by Scheuch & Company's American customers was in any way different from the ordinary and customary method prevailing in Europe by which banks accept drafts, retaining possession of the documents until the acceptances have been discharged.

To the second cross-interrogatory he saith:

Our authorizations to Scheuch & Co. to have drafts drawn on the Comptoir d'Escompte de Mulhouse by their American sellers were in no way different from the ordinary methods prevailing among the banks either on the Havre market or in Europe and the Comptoir d'Escompte de Mulhouse, whilst accepting those drafts, always kept in its possession the documents attached to said drafts.

Third cross-interrogatory:

State if the Comptoir d'Escompte de Mulhouse over had at any time any relations or dealings with Steele, Miller & Company by which the said Comptoir d'Escompte de Mulhouse

purchased from Steele, Miller & Company any cotton, and state particularly if you purchased from Steele, Miller & Company the one hundred bales of cotton marked RBTR.

To the third cross-interrogatory he saith:

The Comptoir d'Escompte de Mulhouse never had at any moment direct relations with Steele, Miller & Co., and it purchased no cotton from them; it did nothing by accept—

for the account and by the debit of Scheuch & Co.

1211 the documentary drafts which Steele, Miller & Co. drew on it as counterparts for their sales of cotton to Scheuch & Co. The Comptoir d'Escompte de Mulhouse consequently did not purchase from Steele, Miller & Co. the said 100 bales of cotton R B T R; it only accepted for the account of Scheuch & Co. the draft drawn by Steele, Miller & Co. on the Comptoir d'Escompte de Mulhouse as counterpart for their sale of those 100 bales to Scheuch & Co.

Fourth cross-interrogatory:

If you answer that you did make a direct purchase of this cotton from Steele, Miller & Company, state whether or not the negotiations for the purchase were verbal or in writing, and if you answer that they were verbal, you will state the date or dates on which these negotiations took place, and with whom and in the presence of whom; and if you should answer that the contract was in writing, you will, annex to these deposition copies of any arrangements and all correspondence leading up thereto, and you will permit the authority taking these depositions to examine the original documents and papers and verify your statements, certifying that same are correct.

To the fourth cross-interrogatory he saith:

I repeat that the Comptoir d'Escompte de Mulhouse never made any direct purchase of cotton from Steele, Miller & Co and had no written or verbal agreement with that firm.

Fifth cross-interrogatory:

Please state whether it was and is your custom to purchase cotton in the American market for your own account, or whether or not your business, in so far as cotton is concerned, is confined to the accepting of drafts for account of your own customers.

To the fifht [fifth] cross-interrogatory he saith:

The Comptoir d'Escompte de Mulhouse never purchased, never purchase cotton for its own account in the American market; it has never done more than accepting for
1212 its customers account, the American documentary drafts drawn on itself as counterparts for the sale of cotton made to its said customers by the Americans.

Sixth cross-interrogatory:

State whether or not you charge a commission for accepting drafts, and whether the same is not the usual and customary commission charged by foreign banks, and attach to your depositions a statement showing the commission charged by you on this transaction, and also attach a statement showing the commissions charged by you on the acceptances for account of Scheuch & Company of the drafts drawn by Steele, Miller & Company.

To the sixth cross-interrogatory he saith:

The Comptoir d'Escompte de Mulhouse, as well as all the banks doing similar business, has always charged a commission for the acceptances given against cotton documents, and that commission, agreed upon for such affairs with Scheuch & Co., was 3/16 per cent.

You will find a statement of those commissions in the duplicate of the account.

Seventh cross-interrogatory:

File with your deposition a copy of the account of Scheuch & Company with your house from September 1, 1909, to date. Permit the notary to examine the original books and papers showing the account so as to verify your statements as being correct.

To the seventh cross-interrogatory he saith:

We join the account of MM. Scheuch & Co. with the Comptoir d'Escompte de Mulhouse from September 1st, 1909, to September 14th, 1911, and we permit the Court to have our books examined as far as this account is concerned, as exhibit No. 4.

Eighth cross-interrogatory:

What drafts of Steele, Miller & Company had you accepted

under your arrangement with Scheuch & Company previous to September 1, 1909? Attach to your depositions
1213 a statement of the drafts, the marks of the cotton supposed to have been secured by the bills of lading, the dates the said drafts were drawn and the dates the said drafts were paid, and state by whom paid, and state particularly whether or not they were paid by you by the sale of the cotton, and if so, attach to these depositions a statement showing the disposition of the cotton, to whom sold and how the proceeds were applied.

To the eighth cross-interrogatory he saith:

We attach to the present deposition, a statement of the drafts of Steele, Miller & Co. which the Comptoir d'Escompte de Mulhouse accepted for the account of Scheuch & Co. previous to September 1st, 1909, and exhibit No. 5.

All these drafts were paid by the Comptoir d'Escompte de Mulhouse at maturity Scheuch & Co., who were debited with those payments covered the Comptoir d'Escompte de Mulhouse for them by the funds coming from the sale of the cotton; but the Comptoir d'Escompte de Mulhouse does not possess the elements necessary for giving particulars as to the security for each affair. Besides, the delivery to you Scheuch & Co. account current will show you in what manner our payments were covered.

Ninth cross-interrogatory:

Attach to these depositions a statement of the drafts drawn by Steele, Miller & Company against your bank and accepted by you under your engagement d'importation from September 1, 1909, up to and including the last draft accepted previous to the bankruptcy proceedings, to-wit, May 4, 1910. Describe each draft, describe the character of security attached, (bills of lading), give the date on which each draft was accepted and the date on which each was paid or discharged, and state particularly how discharged, and state whether by the sale of the cotton by your bank, or by Scheuch & Company; and if you state the drafts were paid by the sale of the cotton by your bank, then attach a statement showing the sale, to whom made and how the proceeds were applied.

1214 To the ninth cross-interrogatory he saith:
We join the required statement as exhibit No. 6.

Tenth cross-interrogatory:
To what extent is Scheuch & Company indebted to your bank at this time and what security have you for any such indebtedness?

To the tenth cross-interrogatory he saith:
The debit of Scheuch & Co. to the Comptoir d'Escompte de Mulhouse is fcs. 288,605.30, an amount to be seen in the account current set forth in answer to 7th question.
We have no security in hand, except the documents concerning the 100 bales R B T R we vindicate, and those concerning 1000 bales the merchandise corresponding to which never reached us.

Eleventh cross-interrogatory:
Attach to your depositions a statement of your acceptances against American cotton during the season of 1909 and 1910, that is, beginning from September 1, 1909, and ending August 31, 1910. What was the total amount of drafts accepted by you during the cotton season of 1909 and 1910 against American Cotton?

To the eleventh cross-interrogatory he saith:
We accepted 118850 bales from Sept. 1st, 1909, to Aug. 31st, 1910.

Twelfth cross-interrogatory:
When you have answered the foregoing question state what proportion of the drafts accepted by you were drawn by Steele, Miller & Company and Knight, Yancey & Company and accepted by you for account of Scheuch & Company under your engagement d'importation.

To the twelfth cross-interrogatory he saith:
We accepted for account of Scheuch & Co. during the season 1909-1910, 16253 bales out of which 14703 drafts Steele, Miller & Co. and 200 drafts Knight, Yancey & Co.

Thirteenth cross-interrogatory:
When did you last accept any cotton drafts for account of

Scheuch & Company drawn by either Steele, Miller & Company or Knight, Yancey & Co.?

To the thirteenth cross-interrogatory he saith:

1215 The Comptoir d'Escompte de Mulhouse accepted in the customary manner the last draft drawn upon itself for account of Scheuch & Co.

We had no drafts running from Knight, Yancey & Co. for account of Scheuch & Co.

Fourteenth cross-interrogatory he saith:

Did you limit acceptances for Scheuch & Company? If you state that you limited Scheuch & Company in the amount of acceptances for account, give your reason for not continuing to accept, and did you at the same time discontinue accepting cotton drafts for other houses?

To the fourteenth cross-interrogatory he saith:

We had not to refuse acceptance of the drafts of Steele, Miller & Co. on the Comptoir d'Escompte de Mulhouse as the last drafts of that firm had been accepted before the Comptoir d'Escompte de Mulhouse could have any thought as to Steele Miller & Co.'s unfavorable position.

The Comptoir d'Escompte de Mulhouse was, at any rate, within the limits agreed upon with Scheuch & Co.

Fifteenth cross-interrogatory:

At the time of the failure of Knight, Yancey & Company had you accepted for account of Scheuch & Company, or any other party, drafts of Knight, Yancey & Company; and if you answer yes, annex to your deposition a statement of each draft, together with a statement of the bills of lading attached to these drafts, and state whether or not these obligations have been paid and by whom, or whether or not you now hold same.

To the fifteenth cross-interrogatory he saith:

At the time of the failure of Knight, Yancey we had no acceptance of drafts of that firm for account of Scheuch & Co. We held a certain number of such for account of other customers, but the "Secret professionnel" forbids our giving, when they are concerned, the required information.

Sixteenth cross-interrogatory:

1216 Was your bank aware of the delay in the arrival of the cotton for which it had accepted drafts of Knight, Yancey & Company and Steele, Miller & Company?

To the sixteenth cross-interrogatory he saith:

Indeed the Comptoir d'Escompte de Mulhouse had already noticed for a certain time delays in the arrival of cotton from America, but we knew there was much encumbering on the railroads and in the harbors in America, and that reason had seemed to us to explain quite sufficiently such delays.

Seventeenth cross-interrogatory:

If you answer yes to the foregoing interrogatory state whether or not you made any complaint as to these delays to the steamship lines and if you should answer yes, state whether the complaints were made verbally or in writing, and if you answer the complaint was made verbally, state to whom made and in the presence of whom, and if you answer the complaint was made in writing, annex to your deposition copies of the complaints, together with the replies you received, and submit the original to the authority taking these depositions that he may compare said documents with the copies and certify the copies as being correct.

To the seventeenth cross-interrogatory he saith:

We had not to make any complaint to the steamship lines, for the reason mentioned in the answer above.

Eighteenth cross-interrogatory:

During the latter part of January or the early part of February, 1910, did you not stop the line of credit extended to Scheuch & Company by way of acceptances? If you answer yes, state why you stopped said line of credit, and state whether or not you gave notice of this fact to Scheuch & Company. If you answer yes, state whether said notice was verbal or in writing. If verbal, give the date or dates when given, to whom and in the presence of whom. If you gave such notice in writing, attach to your depositions a copy of such notice or notices, and submit the original to the authority taking these

depositions to the end that he may compare same
1217 with these copies and verify them as being correct.

To the eighteenth cross-interrogatory he saith:

At no moment we stopped the limit of authorization of drafts agreed upon between us & Scheuch & Co.

Nineteenth cross-interrogatory:

Under the direct interrogatory number twenty-one you have been asked to explain in circumstances of your receipt of the custody bills of lading. In answering this interrogatory you will annex all correspondence that you may have had with Scheuch & Company or anyone else on the subject; you will state whether or not you made any inquiry of the Compagnie Generale Transatlantique as to how two sets of bills of lading for the same cotton could be in existence at the same time. If you state that you made inquiry of the Compagnie Generale Transatlantique or any source other than Scheuch & Company, you will state whether this inquiry was verbal or in writing; if you answer verbal, state the date or dates when made, to whom the inquiry was addressed and in the presence of whom, and if you answer this inquiry was in writing, you will attach to your depositions a copy of the communications written by you and received in reply and you will submit the originals to the authority taking these depositions to the end that he may compare them with the copies and certify the copies as being correct.

To the nineteenth cross-interrogatory he saith:

The only paper we have is the memorandum from Scheuch & Co., delivering to us the said custody bill of lading; this paper is attached to our deposition. We made no inquiry of the Compagnie Generale Transatlantique; we simply refer for the rest to the explanations given in our answer to 19th of the (direct) interrogatories.

Twentieth cross-interrogatory:

Under the eleventh cross-interrogatory you have been asked to state the amount of business done by you in ac-
1218 cepting cotton bills of lading in the season of 1909 and 1910. You will state at at this time whether or not in any of these transactions you permitted the substi-

tution of custody bills of lading for through bills of lading. If you answer that you did, you will give the names of the firms by which this substitution was performed, the dates of the drafts, the amounts of the drafts, the dates of the through bills of lading and the dates of the custody bills of lading. We charge you that we are not discussing captains or mates receipts, but are asking solely if, in your experience with American cotton shippers other than Steele, Miller & Company, any case has ever arisen by which port bills of lading and custody bills of lading were in existence for the same cotton and at the same time that the original bills of lading were in your possession. You will answer this question fully and, as stated before, you will give the names of any American cotton houses by, with and through whom any such transactions occurred.

To the twentieth cross-interrogatory he saith:

During the season 1909-1910, as during the preceding seasons, no firm except Steele, Miller & Co. had custody bills of lading remitted to us to be exchanged against through bills of lading.

Twenty-first cross-interrogatory:

You have previously been asked whether or not you had any dealings with Knight, Yancey & Company and whether or not you held in your possession any accepted drafts of Knight, Yancey & Company about the time of the failure of Knight, Yancey & Company. If you answer yes, state whether or not when the failure of Knight, Yancey & Company was announced you made any inquiry concerning the cotton presumably covered by your bills of lading and if you answer that you did, attach to your depositions copies of the inquiries, together with the replies thereto.

1219 To the twenty-first cross-interrogatory he saith:

It happened indeed that we accepted some draft of Knight, Yancey & Co., but as the customers for whose account we had accepted had covered us, it was these customers who had to take direct care of all inquiries concerning the genuineness of the documents: we remained completely outside all these inquiries.

Twenty-second cross-interrogatory:

Did you or did you not know at the time of the failure of Knight, Yancey & Company that the said firm of Knight, Yancey & Company had carried on its business by forging bills of lading and if you answer yes, state whether or not this was a matter of general knowledge at Havre at that time.

To the twenty-second cross-interrogatory he saith:

At the time of the failure of Knight, Yancey & Co. we did not know were forged documents and we think our customers had the same opinion there.

Twenty-third cross-interrogatory:

Did you have any conversation with C. H. G. Linde of Steele, Miller & Company between January and May, 1910, and if you say that you did, repeat this conversation. File as an exhibit to your depositions all correspondence, telegraphic or otherwise, that passed between your bank and Scheuch & Company, and between your bank and any American firm or individual, between January and May, 1910, inclusive, with reference to the business of Steele, Miller & Company, or Knight, Yancey & Company. Attach as an exhibit all correspondence, telegraphic of [or] otherwise, that passed between your bank and Scheuch & Company and the German American National Bank of New Orleans or A. Breton, its vice president, or the Whitney Central National National Bank of New Orleans, of [or] the Canal-Louisiana Bank and Trust Company of New Orleans, of [or] the Hibernia Bank and Trust Company of New Orleans, or any other bank of [or] banker, between April 18, 1910, and May 15, 1910.

1220 To the twenty-third cross-interrogatory he saith:

We do not know, and have never seen Mr. Linde of Steele, Miller & Co. We possess no correspondence concerning the points mentioned, as all inquiries and correspondence that may have taken place have been made directly by Scheuch & Co.

Twenty-fourth cross-interrogatory:

State whether or not you permitted Scheuch & Company to make a habit of swapping bills of lading in all transactions had between you and state when for the first time you permitted

the substitution of said bills of lading. When you have fixed the date of the first substitution of Scheuch & Company state what you did with the original through bills of lading? Did you return them to Scheuch & Company, and if so, did you take a receipt or writing from Scheuch & Company, and if you answer yes, annex to your deposition a copy of any receipt or writing which you may have taken from Scheuch & Company.

To the twenty-fourth cross-interrogatory he saith:

The exchange of bills of lading took place several times through Scheuch & Co.

Those ships' bills of lading that the Comptoir d'Escompte de Mulhouse received were always considered as the natural continuation of the through bills of lading attached to the drafts, and so did not retain our attention.

The through bills of lading were then handed over to Messrs. Scheuch & Co. on their demand and without requiring any receipt.

Twenty-fifth cross-interrogatory:

What other firm besides Steele, Miller & Company ever engaged in this business of exchanging bills of lading for the same cotton or for any other article? State specifically the name of any firm or individual except Steele, Miller & Company which substituted bills of lading covering the same cotton without filing evidence of the fact that it was
1221 done by and with the consent of the transportation company.

To the twenty-fifth cross-interrogatory he saith:

We have no knowledge of exchanges for drafts of other American cotton firms, and as regards Scheuch & Co., we refer to our answer to the preceding cross-interrogatory No. 24.

Twenty-sixth cross-interrogatory:

State whether you permitted the swapping of bills of lading by Knight, Yancey & Company and what official of your bank permitted it to be done?

To the twenty-sixth cross-interrogatory he saith:

We have had no knowledge of any substitution made by

Knight, Yancey & Co., in our bank, of custody bills against through bills.

Twenty-seventh cross-interrogatory:

State further what official of your bank permitted the substitution of bills of lading by Steele, Miller & Company. In answering this question mention the exact transaction in which this proceeding took place.

To the twenty-seventh cross-interrogatory he saith:

I personally authorized to render the through bills of lading to Schouch & Co. and I refer in this respect to my deposition under No. 24 of this cross-interrogatory.

Twenty-eighth cross-interrogatory:

File as an exhibit to your depositions all correspondence, telegraphic or otherwise, which you had with the Compagnie Generale Transatlantique between January 1, 1910, and June 30, 1910, touching movements of cotton by Steele, Miller & Company, and Knight, Yancey & Company. Submit the originals to the authority taking these depositions that he may compare them with the copies and certify the copies as being correct.

To the twenty-eighth cross-interrogatory he saith:

We join the certified copies of our correspondence with the Compagnie Generale Transatlantique as exhibit No. 7 from January 1st to June 30th, 1910; but this correspondence only relates to the disembarking, by authority of justice,
1222 of the 100 bales R B T R laden to our address on board the "Texas." Touching the Steele, Miller & Co. affair, or the Knight, Yancey and Co. affair, we had no other correspondence than this with the Compagnie Generale Transatlantique.

Twenty-ninth cross-interrogatory:

What was the date that you exchanged the bill of lading attached to the draft accepted by you for the one hundred bales of cotton marked R B T R for the custody bill of lading; give the hour of the day, the name of the individual who delivered the bill of lading and a copy of the entry made on your books of this transaction. Permit the authority taking these depo-

sitions to examine the original books to the end that he may compare them with the copy and certify the copy as being correct. State whether or not you still hold both the through bill of lading and the custody bill of lading. If you answer that you do, state whether at the time of the previous exchanges you surrendered the through bills of lading, and if you answer yes, explain why you considered it necessary to retain both original and through bill of lading at this particular time.

To the twenty-ninth cross-interrogatory he saith:

The custody bill for the 100 bales R B T R was delivered to us on May 7th, 1910.

We have kept in our possession through bill of lading concerning the 100 bales R B T R, when the custody bill concerning the same bales was delivered to us, as we have said in our answer to question 19 of the direct interrogatory, and for the reasons mentioned there- [therein].

It was the same, and for the same reasons, with the other deliveries of custody bills.

Thirtieth cross-interrogatory:

Attach to your interrogatories a copy of the charter and by-laws of your corporation. It may be that you do not understand the meaning of the words charter and by-laws. What we desire you to attach is a copy of the authority by
1223 which your corporation exists, together with the rules of business of your corporation.

To the thirtieth cross-interrogatory he saith:

Inclosed find a copy of our charter and by-laws as Exhibit No. 8.

Thirty-first cross-interrogatory:

Is it a custom of the banks doing business in France, and particularly your bank, to speculate in cotton, grain, sugar and other such commodities?

To the thirty-first cross-interrogatory he saith:

We have the best reasons for thinking that no true bank in France does business in personal speculations in cotton, coffee, corn, sugar of [or] other commodities, but for all that

which specially concerns the Comptoir d'Escompte de Mulhouse we can most emphatically declare that never has the Comptoir d'Escompte de Mulhouse engaged for its own account in any speculation of any sort in any commodity whatever.

Thirty-second cross-interrogatory:

Are you acquainted with the following institutions: Credit Havrais, Bank de Mulhouse, and Societe Generale?

To the thirty-second cross-interrogatory he saith:

We have no connection with the following institutions: Credit Havrais, Banque de Mulhouse, Societe Generale. But we know them quite well.

Thirty third cross-interrogatory:

If you answer yes, state whether you know if it is a custom of all or any of them, to speculate in cotton, grain, sugar, or other commodities by direct purchase from the American merchants and then protect these purchases by buying or selling cotton futures?

1224 To the thirty-third cross-interrogatory he saith:

We repeat that we have no connection with the banks above, but we feel quite sure that none of these banks, any more than the Comptoir d'Escompte de Mulhouse, never transacts any operation of speculation for its own account.

Thirty-fourth cross-interrogatory:

If so, state each and every case in which your bank has bought or sold cotton, sugar or grain.

To the thirty-fourth cross-interrogatory he saith:

Our answers to the preceding interrogatories answer this one.

Thirty-fifth cross-interrogatory:

If you answer that you purchased cotton, or other commodities, state how many bales you have purchased in the last year; what facilities you have for receiving and storing such cotton. Give the name of the man or men in charge of your spot cotton department. Give the names of the parties from whom you have purchased cotton, and the parties to whom you have sold

cotton. Attach copies of all account sales and generally enlighten us as to the method of carrying on your cotton department.

To the thirty-fifth cross-interrogatory he saith:
Same answer as above.

Thirty-sixth cross-interrogatory:
If you say you purchased other commodities in the open market and sold same in the open market, give a full statement of these speculations.

To the thirty-sixth cross-interrogatory he saith:
Same answer as above.

Thirty-seventh cross-interrogatory:
In the above numbered and entitled cause Elisee Paul Dubois filed an affidavit in which he made oath as follows:
Prior to the year 1909 the business of the Societe Generale with Scheuch & Company was small and unimportant. In 1909 the bank extended its engagements d'importation with that firm to 5,000 bales of cotton, that is to say, it authorized that firm to have drafts drawn on it for the purchase price of cotton, accompanied by documents giving it title to the cotton,
provided drafts drawn outstanding at any one time
1225 should not exceed 5,000 bales. The arrangement
included the sale of futures in the name of the bank, contemporaneously with the drawing of each draft and corresponding in amount and price with the cotton purchased. The bank had no concern with or knowledge of the contracts or arrangements between Scheuch & Company and the shippers of cotton and extended no credit to the shippers."

Please state whether or not this statement would be correct is [if] applied to your bank instead of the Societe Generale. State whether or not your dealings concerning this cotton were under the terms and conditions as described by Mr. Dubois, correcting or [of] course any defects in figures as to the number of bales forming the basis of the credit.

To the thirty-seventh cross-interrogatory he saith:
Contrarily to the Societe Generale, the Comptoir d'Es-

compte de Mulhouse had continuous and important dealings with Scheuch & Co., even from the season 1908 to 1909, but under the same conditions as those described by the Societe Generale. As for the maximum number of bales for which Scheuch and Co. had been authorized to have drafts drawn on the Comptoir d'Escompte de Mulhouse, it amounted to 10,000.

Thirty-eighth cross-interrogatory:

Affidavits made by the witnesses for the Societe Generale, Bank de Mulhouse, Paul Chardin and yourself set forth the following statement:

On April 20th it was reported in Liverpool that Knight, Yancey and Company were in difficulties, and this report was known at Havre on April 21, 1910. There was no report or rumor then in respect to Steele, Miller & Company. On Saturday evening, April 23rd, Scheuch & Company received from Bremen a telegram stating that a bank of that city refused to accept drafts of Steele, Miller & Company, and they communicated this to the Comptoir d'Escompte de Mulhouse with the statement that the refusal of the Bremen house was as a matter of precaution, on account of the frauds of Knight, Yancey & Company, but without any knowledge that Steele, Miller & Company had acted in the same manner. We asked Scheuch & Company to cable Steele, Miller & Company for information. In the meantime, on April 26th, there arrived the said custody bills of lading, and, pending further information, we decided to hold both the custody bills of lading and the through railroad bills of lading. Afterwards, on the evening of April 26th, a house at Havre received from New Orlean a cable announcing the failure of Steele, Miller &
1226 Company, but the next day the house received a cable from the same correspondent telling it not to reveal the telegram of the day before because it had not been confirmed. Finally, on April 29th, Scheuch & Company received from Steele, Miller & Company advice by cable that they had suspended.

Please state whether this is correct.

To the thirty-eighth cross-interrogatory he saith:

The statement by affidavit which you mention in this interrogatory seems to us to be entirely right and true to the facts.

(Signed) E. LEVEL.
(Signed) J. P. BEECHER,
[Seal] Commissioner.

1227 City of Havre,
Republic of France, ss.

I, J. P. Beecher, vice consul of the United States of America at Havre, France, do certify that Emile Level, the witness, personally appeared before me on the 12th day of October, 1911, at 2 o'clock in the afternoon, at the consulate of the United States at Havre in the Republic of France, and, after being duly sworn to testify the truth, the whole truth, and nothing but the truth, did depose to the matter contained in the foregoing deposition and did, in my presence, subscribe the same and certify to the authenticity of the exhibits. I certify that I have subscribed my name to each half sheet thereof, and further certify that according to cable instructions sent to Messrs. Scheuch & Co., of Havre, France, on September 4, 1911, by J. P. Blair, attorney, the attestations of each exhibit has (in view of their great number) been waived.

Witness my hand and official seal the day and year above written.

(Signed) JOHN PRESTON BEECHER,
Vice Consul of the United States of America at Havre, France.

Deposited in the post office at Havre, France, this 13 day of October, 1911.

(Signed) JOHN PRESTON BEECHER,
[Seal] Vice Consul of the United States of America at Havre, France.

[Fourteen $2.50 American consular service fee stamp, each stamped across face with red ink, 12 Oct. 1911.]

Consular fee	$35.00
Copying, verifying accounts, typing and services of clerk	35.00
Total	$70.00

1228 EXHIBITS ANNEXED TO DEPOSITION OF EMILE LEVEL.

Filed October 24th, 1911.

United States District Court, Eastern District of Louisiana.

J. A. E. Pyle, Trustee,
vs. No. 14241.
Texas Transport & Terminal Co., et al.

At the execution of a commission for the examination of witnesses in a case depending in the District Court of the United States for the Eastern District of Louisiana, wherein J. A. E. Pyle is complainant, and the Texas Transport and Terminal Company, et als., are defendants, these exhibits numbered 1 to 13 were produced and sworn to by Emile Level and subscribed by him at the time of his examination.

(Sig.) E. LEVEL.
(Signed) JOHN PRESTON BEECHER,
[Seal Vice Consul of the United States and Commissioner.

1229 EXHIBIT NO. 3.

Scheuch & Co., Havre. Je/K.

Havre, May 7, 1910.

Comptoir Escpte de Mulhouse,
E/V.

Gentlemen:

Inclosed we have the pleasure to remit you custody bill of lading for

R. B. T. R. 100 B.

for which you will please acknowledge receipt.

Accept, gentlemen, our sincere salutations.

p. pro. SCHEUCH & CO.
GEO. FREBOURG.

14241

1230 EXHIBIT NO. 4.

Comptoir d'Escompte de Mulhouse.
Fonde en 1848.

Capital, Fr. 15,000,000.

Succursale Du Havre.

Adresse Teleg. Mulesco.
Telephone 8-14.

Havre, Sept. 11/1911.

Mess. Scheuch & Co.,
City.

We have the honor to forward to you herewith extract of your account current up to the 14th of September, 1911, settling our mutual account in our favor for the sum of $55,501.30, which we again carry to your debit.

Please examine the same and advise us if it meets with your approval.

Presenting to you our sincere salutations.

Manager.

N. B.—We request you to return without delay the hereto annexed admission of your approval duly signed by you.

14241

Dt. Messrs. Scheuch & Co., in Account with Interests with The Comptoir d'Escompte de Mulhouse. Ct.

1231

1909								1909					
				Interests brought over			$1,426.15						$1,728.63
Sept. 1	$ 39,288.88	Balance New Account		31 Aug.	date			Sept. 1					
" 1	1,855.69	Loss on settlement 150 B/C, September		26 "	57	17.62		3	$ 6,730.77	Deposits	3 Sept.		
" 3	667.18	" " 100 "		27 "				"	6,730.77	"	" "	65	145.58
" 4	3,462.73	" " 150 "		" "	58	39.92		4	1,153.46	"	4 "		
		" " 100 October		" "				"	6,923.01	Transefer note L. Pedron	" "	66	88.85
" "	27,734.96	Transfer of our Accepted Note		4 Sept.	66	305.09							
" 6	967.88	Our Check on London, £200		6 "	68	10.97		6	384.48	Deposits	6 "		
" 7	22,271.97	Transfer of or Accepted Note		7 "	69	256.12		"	1,346.16	"	" "	68	19.62
" 8	813.98	Loss on settlement 50 B/C, November		6 "	68	9.22		7	10,188.72	"	7 "	69	117.21
" "	1087.64	" " 100 B/C, October		3 "	65	11.78		8	3,942.31	"	8 "	70	45.99
" 10	519.35	" " 50 B/C, "		4 "	66	5.71		9	6,730.77	"	9 "	71	79.63
" 11	1,669.75	" " 100 B/C, November		7 "	69	19.20		14	13,461.54	"	14 "	76	170.51
" "	507.98	" " 50 B/C, October		8 "	70	5.93		16	3,460.33	"	16 "		
" "	27,185.44	Transfer of our accepted note		11 "	73	330.75		"	7,689.60	"	" "	78	145.00
" "	11,199.12	" "		12 "	74	138.11		18	6,538.53	"	18 "	80	87.18
" 13	16,736.76	" "		13 "	75	209.21		"	8,184.69	Warrants remitted	17 "	79	107.77
" 14	18,44.57	Loss on settlement 100 B/C, November		9 "	71	21.82		29	5.24	Difference Loss on Settlement 50 B/C, November	20 "	82	.07
" "	16,546.41	Transfer of our accepted note		14 "	76	209.59							
" 18	21,733.28	" "		18 "	80	289.77							
" "	38,314.01	" "		19 "	81	517.23							
" 20	10,869.15	" "		20 "	82	148.54							
" 21	927.99	Loss on settlement 50 B/C, November		21 "	83	12.84							
" 22	1,346.16	Drawn in Cash		22 "	84	18.84							
" 24	3,868.46	Our Check on London, £800		24 "	86	55.44							
" "	981.49	Loss on settlement 50 B/C, December		20 "	82	13.41							
		50 B/C, January											
" 25	1,153.85	Drawn in Cash		25 "	87	16.73							
" 27	3,076.92	" "		27 "	89	45.64							
" 28	1,137.73	Loss on settlement 100 B/C, November		21 "	83	15.74							
" "	358.39	" " 50 B/C, "		22 "									
" "	440.61	" " 50 B/C, "		" "	84	11.18							
" "	16,338.60	Transfer of our accepted note		28 "	90	245.08							
" 30	30.77	Commissions on Contracts		30 "	92	.47							
	$274,937.70						$4,408.10		$ 83,470.38				$2,736.02
		$1,053.24—Interests 5%					1,263.68			Balance $191,467.32—	30 Sept.	92	2,935.76
	1,054.03	.79 Stamps							$192,521.35	Balance to your Debit.			
	$275,991.73						$5,671.78		$275,991.73				$5,671.78
													E. & O. E.

Dt. Messrs. Scheuch & Co., in Account with Interests with TheBanque de Mulhouse. Ct.

1242												
1910.						1910						
Sept. 1	$ 83,106.44	Balance from old a/c	31 Aug.	time		Sept. 3	$ 211.54	Deposits	3 Sept.	3	$ .11
	$344.05	Intts. 5%			$ 412.85	" 5	346.15	"	5 "	5	.29
	344.11	.06 Stamps				" 8	76.92	"	8 "	8	.10
								Balance $82,471-55	30 "	30	412.35
							82,815.94	Balance due			
	$ 83,450.55				$ 412.85		$ 83,450.55				$ 412.85
1910						1910					
Oct. 1	$ 82,815.94	Balance from old a/c	30 Sept.	time		Nov. 21	$ 27,490.52	Deposits	21 Nov.	52	$ 238.25
	805.47	Intts. 5%			$1,086.57			Balance $55,325-14	31 Dec.	92	848.32
	.02	Stamps					56,130.91	Balance due			
	$ 83,621.43				$1,086.57		$ 83,621.43				$1,086.57
1910						1911					
Jany. 1	$ 56,130.91	Balance from old a/c	31 Dec.	time		Jany.					
	702.89	Intts. 5% 90 Days					$ 56,833.80	Balance due	31 March		
	$ 56,833.80						$ 56,833.80				
1911						1911					
April 1	$ 56,833.80	Balance from old a/c	31 March	time		June 28	$ 3,846.15	Deposits Cie Cotonniere	28 June	89	$ 57.05
May 2	383.28	Our payments to Grandmaison	2 May	32	$ 2.58			Balance $53,590-04	30 "	91	812.78
June 28	19.39	Checks on Rouen	28 June	89	.29		$ 54,112.79	Balance due			
	722.47	Interests 5%			866.96						
	$ 57,958.94				$ 869.83		$ 57,958.94				$ 869.83
1911											
July 1	$ 54,112.79	Balance from old a/c	30 June	time							
Aug. 3	3.43	Our payment to Guenard	3 Aug.		$ .02						
" 4	608.30	" " " Basset	4 "		3.55						
	576.78	Interests 5%			692.13						
								Balance $54,924-24	14 Sept.	76	$ 695.70
	$ 55,501.30				$ 695.70		$ 55,501.30	Balance due			
1911											
Sept. 14	$ 55,501.30	Balance due					$ 55,501.30				$ 695.70

EXHIBIT No. 5.

Statement of Steele, Miller & Co.'s Drafts, Accepted by the Comptoir d'Escompte de Mulhouse for Account of Scheuch & Co. Prior to September 1st, 1909.

Dates of Acceptance	Amount	Falling Due	Marks	No. of Bales	S/S
9 February	26,830.65	May	R E T Z	100 Bale	Magician
"	23,669.10	"	S A D A	100 "	"
11 "	23,417.—	12 "	S A S A	100 "	"
"	12,127.10	"	P A A B	50 "	"
16 "	23,822.20	17 "	S U Y N	100 "	"
"	24,813.15	"	T O B E	100 "	"
"	50,176.90	"	P Y Y T	100 "	Astrian
			P Z Z S	100 "	"
18 "	12,331.10	19 "	P J L O	50 "	Magician
"	26,735.—	"	Q T M O	100 "	"
29 March	25,193.45	27 June	Q W X B	100 "	Virginie
"	51,365.90	"	Q L L M	100 "	Texas
			Q J K L	100 "	"
30 March	49,785.30	28 June	Q M M N	100 "	Oxonian
			S Z X V	100 "	"
1244 "	24,403.10	"	S X V Q	100 "	Atlantian
"	25,649.25		Q I H J	100 "	Oxonian
			Q K K L	100 "	Texas
"	101,574.55	"	R T R Q	100 "	

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					QNNO	100	"	Oxonian
					ROMK	100	"	
5	April	49,070.90	4	July	QLJK	100	"	Virginie
	"	48,126.—		"	SJOB	100	"	Atlantian
					SXWZ	100	"	
	"	49,966.80		"	SWZX	100	"	Atlantian
					QMPO	100	"	Texas
	"	24,966.—		"	RIFC	100	"	"
	"	48,988.35		"	RYWV	100	"	Atlantian
					REJO	100	"	Oxonian
					SWIO	100	"	"
7	"	49,030.70	6	"	QCCD	100	"	"
					RYAK	100	"	"
	"	48,989.40		"	QINS	100	"	"
					RCOP	100	"	"
	"	23,125.50		"	SEFG	100	"	St-Laurent
	"	24,590.80		"	RXPN	100	"	Texas
13	"	24,346.15	12	"	HOWD	100	"	Candidate
	"	25,023.90		"	QGHI	100	"	Oxonian
14	April	49,183.90	13	"	LEDT	100	34	Candidate
					LACO	100		Lagician
							66	Candidate
	"	24,598		"	QNBC	100	Bales	Oxonian
15	"	47,775.20	14	"	SBBC	100	"	"
					SCCD	100		"

EXHIBIT No. 5.

Statement of Steele, Miller & Co.'s Drafts, Accepted by the Comptoir d'Escompte de Mulhouse for Account of Scheuch & Co. Prior to September 1st, 1909.

Dates of Acceptance	Amount	Falling Due	Marks	No. of Bales	S/S
			HLCK	100 Bales	Atlantian
16 April	72,471.—	15 July	HOPA	100	"
			HRKQ	100 "	Verginie
26 "	25,510.80	25 July	LEXT	100	Atlantian
11 May	53,929.85	9 Aout	RQQR	100	St-Laurent
			QARE	100	"
"	55,792.30	"	QELO	100	Oxonian
			QNZP	100	St-Laurent
"	28,266.85	"	REAA	100	"
26 "	55,218.45	24 "	RGFX	100	Honduras
			QITQ	100	
"	27,704.80	"	QAMQ	100	Oxonian
1245					
1909					
25 May	27,430.35	23 Aout	RZXW	100 Bales	Texas
" "	27,472.55	"	RKMP	100	Virginie
1 June	28,161.35	30 "	RICK	100	"
7 "	58,142.—	5 September	RRRO	100	Honduras
			RKII	100	Virginie

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	"	85,809.90		"	RCCD	100		Virginie
					QQID	100		Texas
					QBOT	100		"
10	"	28,315.35	8	"	RAEE	100		French Line
	"	58,151.40		"	ROAT	100		Virginie
					REEK	100		Honduras
	"	29,130.75		"	QALL	100		Texas
14	"	112,273.05	12	"	SSIN	100		"
					STIZ	100		"
					SKPQ	100		"
					SOTT	100		"
	"	28,826.70		"	RNOE	100		Honduras
15	"	58,126.40	13	"	RPPU	100		
					RIOW	100		Bordeaux
					RKON	100		Honduras
16	"	86,868.25	14	"	SITO	100	48	Hondures
					SOAA	100	52	Virginie
					QRRK	100		Virginie
17	"	85,880.35	15	"	QZRO	100		"
					QIKX	100		Texas
21	"	56,910.20	19	"	SREP	100		"
					SOAB	100		"
"	"	57,003.50		"	ROAC	100		"
					RRKA	100	98	Texas
							2	Bordeaux

EXHIBIT No. 5.

Statement of Steele, Miller & Co.'s Drafts, Accepted by the Comptoir d'Escompte de Mulhouse for Account of Scheuch & Co. Prior to September 1st, 1909.

Dates of Acceptance	Amount	Falling Due	Marks	No. of Bales	S/S
June	84,946.30	September	R A P C	100 Bales	
			S O A C	100	Texas
			S X Z X	100	
22 "	28,182.45	20 "	S H H O	100	"
"	28,199.—	"	R I T E	100	Bordeaux
"	56,420.10	"	S B E T	1000 66 B/	Texas
			R I O W	100 34	Bordeaux
			Q E E B	50	Texas
23 "	56,413.80	21 "	R I N E	50	
			R A E K	100	
			S K I A	100	Texas
1 July	84,801.75	29 "	R Z Z X	100 87	Bordeaux
			R K O Z	100 13	Texas
31 "	28,160.55	29 October	S O A T	100 50 B/	Texas
				50	Bordeaux

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Statement of Steele, Miller & Co.'s Drafts Accepted by the Comptoir D'Escompte de Mulhouse from the 1st of September, 1909, to the 10th of May, 1910.

1909								
5	October	32,689.20	3	January	R V C F	100	Bales	St. Laurent
"	"	32,733.15		"	R X V D	100		Virginie
7	"	33,251.80	5	"	Q I B S	100		Virginie
"	"	33,066.10		"	Q A V V	100		Californian
"	"	33,162.70		"	Q T O M	100		Virginie
"	"	32,939.30		"	Q R U G	100		Californian
"	"	32,762.70		"	R N V A	100		Louisiane
"	"	16,603.50		"	R Z S E	50		Californian
12	"	33,732.40	10	"	Q W D I	100		Mexico
"	"	33,108.40		"	R G P L	100		Guyane
"	"	33,094.55		"	Q E V A	100		Mexico
"	"	33,602.80		"	Q U A C	100		"
"	"	26,153.30		"	R N I P	80		Bordeaux
"	"	33,905.70		"	R O B I	103		Chicago
"	"	33,110.35		"	R H O X	100		Mexico
13	"	33,374.35	11	"	Q O D P	100		Californian
"	"	33,088.20		"	R I U C	100		Mexico
"	"	33,447.20		"	Z W I N	100		"
"	"	33,032.70		"	R E X Y	100		"
19	"	33,524.35	17	"	Q E Z I	100		Guyane

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EXHIBIT No. 6.

Statement of Steele, Miller & Co.'s Drafts Accepted by the Comptoir D'Escompte de Mulhouse from the 1st of September, 1909, to the 10th of May, 1910.

19	Octeber	36,067.55	January	R I K S	100		Virginie
"	"	35,725.25	"	Q A I N	100		"
"	"	36,360.80	"	Q O K S	100		"
"	"	35,855.20	"	R V O Y	100		"
"	"	36,246.30	"	Q V C A	100		Louisiane
"	"	34,900.90	"	R H L E	100		Guatemala
1247	1909.						
19	October	34,645.65	17 January	Q H I C	100	Bales	Guatemala
"	"	34,788.35	"	R N E L	100	"	"
"	"	34,561.15	"	Q S B M	100	"	Virginie
"	"	35,533.60	"	Q I E S	100	"	"
"	"	35,172.45	"	R W B D	100	"	Guatemala
"	"	35,307.75	"	R Y W P	100	"	Virginie
"	"	35,171.05	"	R X Y S	100	"	"
"	"	35,316.60	"	R Q A G	100	"	Louisiane
"	"	35,612.25	"	Q U L I	100	"	Virginie
"	"	34,347.90	"	R B E I	100	"	Mexico
"	"	34,705.15	"	R S J P	100	"	Honduras
"	"	35,026.40	"	Q E C H	100	"	"
"	"	34,908.30	"	R C N A	100	"	Virginie
20	"	33,469.40	18 "	Q A N Y	100	"	Louisiane

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"	"	33,105.55	"	"	R Q C D	100	"	Guatemala
21	"	6,692.10	19	"	R I N P	20	"	Black Prince
"	"	35,456 35	"	"	R A Q W	100	"	Louisiane
"	"	36,792.30	"	"	Q X O P	100	"	"
25	"	26,574.95	23	"	R W H A	75	"	"
"	"	8,875.45	"	"	"	25	"	"
"	"	26,638.20	"	"	R E W Z	75	"	"
"	"	9,149.—	"	"	"	25	"	"
"	"	33,914.75	"	"	V U R	100	"	Virginie
"	"	33,740.40	"	"	L E R	100	"	"
"	"	36,415.15	"	"	R I S A	100	"	Louisiane
"	"	33,966.55	"	"	N I Q	100	"	Virginie
"	"	33,949.50	"	"	W Y R	100	"	Guatemala
"	"	34,551.20	"	"	M O Q	100	"	"
26	"	17,607.20	24	"	R A O T	50	"	French Line
"	"	35,564.55	"	"	R Z A Y	100	"	Meltonian
"	"	35,427.50	"	"	S Z K A	100	"	Louisiane
1248	1909.							
26	October	35,281.45	24	January	S Q N E	100	Bales	Asian
"	"	35,359.—	"	"	S T C H	100	"	"
"	"	36,153.75	"	"	R R S T	100	"	Dictator
"	"	36,302.—	"	"	R W W A	100	"	Asian
27	"	35,544.55	25	"	R F F G	100	"	Virginie
"	"	35,736.30	"	"	Q Q B K	100	"	"
"	"	36,558.60	"	"	R X Y D	100	"	Kingstonian
"	"	35,701.50	"	"	R B L U	100	"	Virginie

EXHIBIT No. 6.

Statement of Steele, Miller & Co.'s Drafts Accepted by the Comptoir D'Escompte de Mulhouse from the 1st of September, 1909, to the 10th of May, 1910.

27	October	35,734.75	25	January	Q E Q Q	100	Bale.	"
"	"	35,506.50	"	"	R R R K	100	"	Memphian
"	"	35,856.35	"	"	R L I N	100	"	Virginie
"	"	35,863.60	"	"	R L E N	100	"	"
"	"	35,840.60	"	"	R P Q Q	100	"	Guatemala
"	"	36,416.95	"	"	R P U I	100	"	Virginie
"	"	36,177.55	"	"	R V A M	100	"	Kingstonian
29	"	35,641.55	27	"	R M M W	100	"	Virginie
"	"	35,728.—	"	"	Q Q E Z	100	"	Guatemala
"	"	35,677.30	"	"	R L S E	100	"	Virginie
"	"	35,913.—	"	"	R H A G	100	"	"
"	"	36,531.30	"	"	Q E H O	100	"	Guatemala
30	"	36,626.75	28	"	R O M E	100	"	Virginie
"	"	35,736.15	"	"	R G G F	100	"	"
"	"	35,467.—	"	"	R M O Z	100	"	Mexico
"	"	36,201.15	"	"	R U E Z	100	"	Dictator
"	"	35,553.20	"	"	S R Y P	100	"	"
"	"	36,218.50	"	"	R U L X	100	"	Memphian.
"	"	36,137.95	"	"	R K E P	100	"	Virginie
"	"	35,648.25	"	"	R I A T	100	"	"
"	"	36,696.—	"	"	Q O M Y	100	"	Memphian

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" "	35,480.70	" "	SFOA	100	"	Virginie	
" "	36,845.75	" "	QDOF	100	"	"	
1249 1909.							
30 October	35,163.25	28 January	SROX	100	Bales	Irishman	
" "	36,090.40	" "	RADF	100	"	Virginie	
" "	37,156.25	" "	QEZT	100	"	Guatemala	
" "	36,779.60	" "	RHUX	100	"	Memphian	
" "	36,230.05	" "	RPKT	100	"	"	
" "	36,151.65	" "	RURT	100	"	"	
" "	36,650.30	" "	QUTH	100	"	"	
" "	36,163.80	" "	RBYN	100	"	Virginie	
" "	35,415.65	" "	RELI	100	"	"	
" "	35,527.55	" "	QAQQ	100	"	"	
" "	36,048.70.	" "	QERT	100	"	"	
2 November	36,332.75	31 "	RNUG	100	"	Memphian	
4 "	36,261.05	2 February 1910	RLER	100	"	"	
" "	35,439.85	" "	ROMA	100	"	"	
" "	36,390.80	" "	RYNA	100	"	"	
" "	36,326.60	" "	RHER	100	"	"	
" "	36,895.25	" "	QUTE	100	"	Konakay	
" "	36,336.70.	" "	RAND	100	"	Memphian	
" "	36,255.80	" "	RAWK	100	"	"	
" "	38,049.50	" "	RMEM	100	"	"	
5 "	37,991.05	3 "	QOBI	100	"	"	
9 "	36,094.25	7 "	RJQV	100	"	Konakay	

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1251 United States District Court, Eastern District of Louisiana, New Orleans Division.

J. A. E. Pyle, Trustee,
vs. No. 14,240.
Texas Terminal & Transport Company, et als.

Exhibits offered in connection with deposition of Emile Level, filed October 24, 1911, in the case bearing above title and numbered 14241 of the docket of the said Court.

At the execution of a commission for the examination of witnesses in a case depending in the District Court of the United States for the Eastern District of Louisiana, wherein J. A. E. Pyle is complainant, and the Texas Transport and Terminal Company, et als., are defendants, these exhibits 1 to 13 were produced and sworn to by Emile Level and subscribed by him at the time of his examination.

(Signed) JOHN PRESTON BEECHER,
[Seal] Vice Consul of the United States and Commissioner.
(Signed) E. LEVEL.

Exhibits numbered 9, 10, 11, 12, and 13, being draft, through bill of lading, custody bill of lading, insurance certificate, and invoice, omitted per instructions.

* * * * * * * *

1260 United States District Court, Eastern District of Louisiana, New Orleans Division.

J. A. E. Pyle, Trustee,
vs. No. 14,277.
Texas Transport & Terminal Company, et als.

Deposition of Jules Castel, Taken Under Commission Issued Out of the Clerk's Office of the United States District Court for the Eastern District of Louisiana, on July 17th, 1911, in the Above Entitled and Numbered Cause, on Behalf of the Credit Havrais, One of the Defendants Herein. Offered and Filed November 20th, 1911.

1261 Interrogatory No. 1:

Please state your name, age, residence and occupation. How long have you been engaged in your present occupation?

To the first interrogatory he saith:

My name is Castel (Jules). I am sixty-three years old. My residence is in this city, 8 Glaciere Street. I entered in the Credit Havrais on second of January, one thousand eigh' hundred and sixty-five, as bookkeeping clerk. I was named cashier in the year 1880; attorney in the year 1891; and finally the first of July, 1908, the Board of Administration appointed me as delegated manager, charged with the management, which functions I am actually occupying.

Interrogatory No. 2:

Do you know the Credit Havrais, a defendant in the above entitled cause? If so, state whether or not it is an incorporated institution. In what country was it incorporated? What is the nature of its business? In what place or places has it a business domicile? What is its capital?

To the second interrogatory he saith:

The Credit Havrais is a bank establishment, established as per contract passed before Marcel, Esquire, notary in Havre, on the fifth of July, 1864, with a nominal capital, of Frs. 8,000,000" (eight million francs); the head office is situated in Havre, Boulevard de Strasbourg, Nr 79.

EXHIBIT No. 6.

Statement of Steele, Miller & Co.'s Drafts Accepted by the Comptoir D'Escompte de Mulhouse from the 1st of September, 1909, to the 10th of May, 1910.

10 November	33,579.30	8 February	HIZ	100	Bales	Virginie
22 December	39,032.40	22 March	RGPE	100	"	Tampican
" "	39,325.45	" "	RVEN	100	"	"
" "	38,799.80	" "	SGRI	100	"	"
" "	38,925.10	" "	RDAT	100	"	Virginie
" "	38,341.50	" "	SREG	100	"	"
" "	38,733.70	" "	RHIK	100	"	Tampican
" "	39,020.05	" "	RDEF	100	"	"
" "	38,380.75	" "	SRIL	100	"	"
" "	38,604.55	" "	RHTU	100	"	Honduras
27 "	39,155.85	27 "	RTAG	100	"	Tampican
28 "	38,719.75	28 "	RDEM	100	"	"
1250 1909.						
28 December	39,480.90	8 March	RACR	100	Bales	Virginie
" "	38,786.55	" "	STAO	100	"	Tampican
" "	38,873.60	" "	RGYR	100	"	"
" "	38,645.40	" "	SPUT	100	"	Honduras
29 "	38,361.85	29 "	SCRE	100	"	Tampican
" "	38,644.90	" "	STAG	100	"	Virginie
" "	38,884.30	" "	RDIT	100	"	Tampican
" "	39,006.15	" "	RTNS	100	"	"

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"	"	38,706.60	"	"	RBAC	100	" Honduras
12 February 1910		37,155.—	13 May		QWDN	100	" Louisiane
12	"	36,962.30	"	"	SOBI	100	" "
"	"	37,240.40	"	"	QUET	100	" "
"	"	37,097.55	"	"	RBTR	100	" Guatemala
"	"	37,181.60	"	"	QRAN	100	" Louisiane
"	"	38,148.45	"	"	RSPC	100	" Texas
16	"	38,970.70	"	"	RHGA	100	" "
"	"	39,564.65	"	"	ZBTK	100	" "
"	"	39,559.75	"	"	RSTE	100	" French Line
18	"	39,479.25	19	"	QOJL	100	" Texas
16	"	38,571.80	17	"	QASP	100	" Louisiane
"	"	38,354.40	"	"	QERC	100	" Texas
"	"	37,353.35	"	"	SPRD	100	" "
14	"	37,520.75	15	"	RAIL	100	" "
"	"	37,773.80	"	"	RSKX	100	" Louisiane
"	"	38,589.05	"	"	RMVO	100	" Tampican
"	"	37,857.—	"	"	QMPA	100	" Texas
"	"	38,100.75	"	"	RFIJ	100	" Louisiane
"	"	38,104.70	"	"	RCON	100	" Tampican
"	"	38,176.25	"	"	RMIS	100	" Texas

Exhibit No. 6.

According to the paragraphs numbers 1 and 9 of the article fifth of the statutes, the operations of the Societe consist especially:

"To discount all commercial drafts on France and foreign countries, warrants or securities' bills, letters of Bottomry loan, and in general all kinds of engagements at fixed maturities resulting from commercial or industrial transactions, to negotiate and to rediscount the above mentioned values after having indorsed same; to issue and to accept any 1262 drafts and letters of exchange, etc."

"Finally, to do, in general, all operations of a banking firm, viz., in France or in foreign countries."

Interrogatory No. 3:

Are you connected with the Credit Havrais? If so, in what capacity and for how long? State generally the nature and scope of your duties.

To the third interrogatory he saith:

No contract is engaging me with the Credit Havrais, my functions shall last all the time which may please to the Council of Administration to continue to me its confidence.

My quality of delegated manager, charged with the direction, explains sufficiently the nature and object of my functions.

Interrogatory No. 4:

If, in answer to previous interrogatories, you have said that the Credit Havrais was engaged in the banking business in Havre, France, state how long it has been so engaged, and state in a general way the nature and extent of such business. Did it include the furnishing and advancing of funds for the purchase of cotton and the taking and holding of the title to said cotton?

To the fourth interrogatory he saith:

To be conform with its statutes and settlements, the Credit Havrais did not, since its foundation, do anything but bank business in Havre, which according to its regular progress presented, in 1910, a general movement of Frs. 1,625,307,446.55, as it is proved by the copy of the report of exercise 1910, which I annex to the present deposition, as exhibit under number 1.

One of the most important branches of operations of the Credit Havrais consist to make advances of moneys to its customers, or to accept for their account letters of exchange drawn against documents or merchandises, which
1263 constitute a guarantee that the Credit Havrais detain until the definite settlement of its advances.

Interrogatory No. 5:

Do you know the firm of Scheuch and Company of Havre, France? How long have you known said firm? Who are the individual members thereof? State, if you know, the business in which said firm was engaged during the time you have known it.

To the fifth interrogatory he saith:

I know the firm of Scheuch & Co., since its foundation, in Havre in 1901.

Its partners are:

Ferdinand Scheuch.

Albert Schilling.

These gentlemen are trading here, as merchants and agents, importing cotton and representing American cotton shippers.

Interrogatory No. 6:

State, if you know, the general reputation enjoyed by said firm at Havre for business integrity and fair dealing from the time you first knew it down to and including May 7, 1910. State, if you know, its general reputation, during the same period, as to its solvency and financial responsibility. What sort of credit did it have at Havre?

To the sixth interrogatory he saith:

The partners have been always considered as honorable, active, and intelligent in business.

After having started in 1901 with a capital of fifty thousand francs the said partners possessed in 1909-1910 a fortune estimated to seven hundred and fifty thousand francs, which amount was considered sufficient to guarantee the final outturn of the business treated for their account; consequently they had a good credit.

1264 Interrogatory No. 7:

How was said firm regarded during said period as

to its financial responsibility and business integrity by the Credit Havrais and yourself? State whether or not during said period you became aware of anything which gave you cause to doubt the solvency or honesty of said firm.

To the seventh interrogatory he saith:

The business transacted by the Credit Havrais for account of the firm of Scheuch & Company having been always punctually settled, never I have had the least doubt about the solvency or honesty of said firm.

Interrogatory No. 8:

During said period did your firm have any business arrangements or dealings with the said Scheuch and Company? If yes, please give a clear, full statement setting forth such business arrangements or dealings.

To the eighth interrogatory he saith:

It was in October, 1905, that the business relations began between the firm of Scheuch & Company and the Credit Havrais, and these relations continued every year during cotton seasons.

They consisted invariably in authorizations given verbally to Scheuch & Company, to draw on the Credit Havrais, by their friends of America, for the counter-value of a certain quantity of cotton determined each time.

Interrogatory No. 9:

If, in answer to previous interrogatory, you have stated that the Credit Havrais authorized Scheuch and Company to have drafts drawn on said bank by that firm's American customers for the purchase price of cotton, state, if you have not already done so, whether the arrangement provided
1265 that such drafts should always be accompanied by documents which would give the bank title to the cotton described in the draft.

State whether or not the Credit Havrais would have authorized the drawing of said drafts or would have accepted the same if it had not believed that on acceptance it acquired title to and possession and control of the cotton described in the drafts.

What arrangement, if any, did the said bank have with

Scheuch and Company in respect to the sale of futures in connection with the drawing or acceptance of any such drafts? Explain in whose names futures were sold and what was the purpose of such sale of futures.

To the ninth interrogatory he saith:

It was formally agreed that the drafts drawn on the Credit Havrais ought to be accompanied by the documents relating to the cotton, of which they were the counter-value, and these documents, or the cotton itself, after landing, were remaining in the possession of the Credit Havrais as a title of guarantee until the settlement of its acceptances.

Never, the Credit Havrais would have authorized the said drawing if it would have suspected, only for one instant, that the documents which were remitted to it, did not constitute a sure guarantee of the settlement of its acceptances.

With regard to the sales of "futures" passed to the Caisse d Liquidation, in the name of the Credit Havrais, for quantities of cotton equivalent to the number of bales of which the counter-value was drawn on the bank, this measure constituted a precaution against the fluctuations of prices which could have happened at the moment of realizing the cotton.

Interrogatory No. 10:

State whether or not the Credit Havrais had any interest in or knowledge of the contracts or arrangements between Scheuch and Company and the shippers of the cotton
1266 covered by such drafts.

State whether or not the said bank extended or intended to extend any credit to said shippers of the cotton.

To the tenth interrogatory he saith:

The Credit Havrais had no interest and did not know the conditions of the contracts or arrangements passed between Scheuch & Company and the shippers of the cotton covered by the drafts.

Operating for account of Scheuch & Company, the bank had not to examine if it was convenient to extend the credit to said shippers of cotton and consequently, never had the intention to allow the least credit to said shippers of cotton.

Interrogatory No. 11:

Do you know the firm of Steele, Miller and Company or any

of its individual members? What is the nature or extent of your acquaintance with said firm or its individual members?

To the eleventh interrogatory he saith:

I know the firm of Steele, Miller & Co., but I know none of its members individually. And this knowledge is relating, only, to the advices of drafts that the said firm was sending to the Credit Havrais when it was drawing for value of the cotton shipped by order and for account of Scheuch & Company.

Interrogatory No. 12:

While the arrangements aforesaid existed between the Credit Havrais and Scheuch and Company, what knowledge of or interest in the contracts or arrangements between Scheuch and Company and Steele, Miller and Company did the said bank have?

State whether or not said bank ever extended or intended to extend any credit to the said Steele, Miller and Company.

To the twelfth interrogatory he saith:

The Credit Havrais had no knowledge at all, and consequently no interest, in the arrangements passed between Scheuch & Company and Steele, Miller & Company.

1267 Working as I have explained above, the Credit Havrais never had to examine if it was convenient to extend a credit to Steele, Miller & Company and, consequenty, it had never any intention to do so.

Interrogatory No. 13:

Please give the date or dates of the first draft or drafts of Steele, Miller & Company which were accepted by the Credit Havrais under the aforesaid arrangements with Scheuch and Company. Give also the date or dates of the last of such drafts of Steele, Miller and Company accepted by the Credit Havrais. Please state the total number of bales of cotton during said period thus covered by drafts of Steele, Miller and Company accepted by the Credit Havrais.

To the thirteenth interrogatory he saith:

The first drafts issued on the Credit Havrais by Steele, Miller and Company, for account of Scheuch and Company,

bear the date of 10th of May, 1909, and the last drafts 7th of March, 1910. During that period the number of bales covered by drafts of Steele, Miller and Company on, and accepted by the Credit Havrais, amounted to 17,300 bales.

Interrogatory No. 14:

Did the Credit Havrais pay at maturity all said drafts of Steele, Miller and Company accepted by it? Did it receive all the cotton described in said accepted drafts? If not, please state the number of bales not received and the marks thereof, and the dates and amounts of the drafts drawn against the same. For the purpose of this question and answer, treat the one hundred bales of cotton concerned in this suit as cotton not received.

To the fourteenth interrogatory he saith:

The Credit Havrais paid at maturity all the drafts of Steele, Miller and Company accepted by said bank, which received all the cotton described by said drafts, with the exception of the following quantities:

1268 S R U I, 100 bales cotton draft of Frs. 38,828.20, dated 15th February, 1910.

Q R A S, 50 bales cotton party of draft of Frs. 39,299.30, dated 2d March, 1910.

R H E L, 100 bales cotton draft of Frs. 37,357.80, dated 5th March, 1910.

Q A T U, 100 bales cotton draft of Frs. 38,310.95, dated 5th March, 1910.

R T O U, 100 bales cotton draft of Frs. 37,892.50, dated 7th March, 1910.

Interrogatory No. 15:

With the exception of the cotton described in answer to the last interrogatory as not received, did Steele, Miller and Company perform their obligations in respect to the other drafts and shipment of cotton?

To the fifteenth interrogatory he saith:

With the exception of 450 bales cotton above described as never received, Steele, Miller and Company fulfilled their obligations relatively to the other drafts.

Interrogatory No. 16:

This is a suit in which J. A. E. Pyle, trustee in bankruptcy of Steele, Miller and Company, is suing to recover one hundred bales of cotton, or the value thereof, on the ground that the same were transferred by Steele, Miller and Company, while insolvent, to Scheuch and Company or the Credit Havrais, with the intent to prefer Scheuch and Company or the Credit Havrais or both of them—the cotton in ques[illegible] being marked and numbered as follows:

100 bales of cotton marked S R U I 1/100.

Please state whether the Credit Havrais ever accepted any draft drawn by Steele, Miller and Company against cotton so marked and numbered. If yes, please state when and by whom said draft was presented for acceptance and the date of acceptance.

What documents were attached to said draft when presented for acceptance? What became of said documents when the draft was accepted? If you say that they were delivered to the acceptor of the draft, state whether or not they have since remained in its possession or control.

Has the draft since been paid? If so, when and
1269 by whom?

Please annex as part of your answer to this interrogatory the said draft; and if you have answered that there were attached thereto bill of lading, insurance certificate and invoice, please likewise annex to said draft the bill of lading, insurance certificate and invoice attached thereto.

To the sixteenth interrogatory he saith:

The 28th February, 1910, the Credit Havrais received directly from the National City Bank of New York, to be accepted and sent afterwards to the "Banque Francaise Pour Le Commerce & L'Industrie," a Paris (French Bank for Commerce and Industry, Paris) a draft drawn the 15th of February, 1910, by Steele, Miller and Company, at 90 days sight on the Credit Havrais under the number 2,214 for Frs. 38,828.20.

To said draft the following documents were annexed:

1° Through bill of lading to S R U I, 100 bales cotton per French Line.

2° Insurance Certificate, issued by Insurance Co. of North America, Philadelphia, covering the cotton for Frs. 44,000 (forty-four thousand francs).

3° Copy of invoice.

These exhibits are annexed to the present declaration under the numbers 2, 3 and 4.

Against its acceptance the Credit Havrais kept the above documents, which, since then, have remained always in its possession.

On expiration, the 29th May, 1910, the Credit Havrais paid its said acceptance, in the hands of Credit Lyonnais, which was the bearer of it.

This said draft is annexed to the present declaration, as exhibit, under the number 5.

Interrogatory No. 17:

State whether or not the said bank had any reason at the time for not believing that the bill of lading attached to the draft was genuine. What was the belief of the bank
1270 on the subject?

What, if any, reason had the bank at the time for not believing that the cotton described in the said draft and bill of lading had been actually shipped and was on its way? What was the belief of the bank on the subject?

What was the belief of the bank in respect to the transfer to it of said bill of lading and its possession thereof being sufficient to give it possession and dominion over said cotton and entitling it to receive the same on its arrival?

To the seventeenth interrogatory he saith:

In giving its acceptance, the Credit Havrais had no reason to doubt the authenticity of the through bill of lading which was remitted to it. Its conviction was that the S R U I, 100 bales, had been regularly loaded and would be delivered to its bank on arrival of the steamer, as that had occurred for all the previous expeditions of the firm of Steele, Miller and Company.

Interrogatory No. 18:

If, in answer to previous interrogatory, you have stated that the bank believed that said bill of lading was genuine, that the

cotton described therein and in the draft had been actually shipped and was on its way to Havre, and that the transfer to it of said bill of lading and its possession thereof gave it possession of and dominion over said cotton and entitled it to receive the same on its arrival, state what effect said beliefs had upon the action of the bank in accepting said draft. If the bank had not entertained such beliefs, would it have accepted, or would it have refused to accept, said draft?

To the eighteenth interrogatory he saith:

The Credit Havrais would have refused to give its acceptance if it had not the belief that the drawing was regular and the documents authentic.

Interrogatory No. 19:

Did said bank ever receive any bill of lading issued by the Compagnie Generale Transatlantique covering one
1271 hundred bales of cotton, corresponding with the marks and numbers of the lot of one hundred bales of cotton above referred to?

If yes, state when and how it received said bill of lading and whether a letter or note accompanied the same. Were there two sets of said bill of lading? State what has become of the original annex to the other set of said bill of lading to your answer to this interrogatory. Annex also the letter, if any accompanied the bill of lading, and state whether it is truly the letter which you received at the time, and from whom it was received.

In whose possession and control has been the said bill of lading of the Compagnie Generale Transatlantique since said bank received the same?

In whose possession or control has been the bill of lading attached to the said draft since the said bank received the same?

To the nineteenth interrogatory he saith:

On the 7th of May, 1910, the Credit Havrais received through Messrs. Scheuch & Co., according to the note I annex to the present interrogatory, under number 6, a custody bill issued by the Compagnie Generale Transatlantique, covering

100 bales cotton corresponding with the marks S R U I, to the lot of 100 bales cotton above referred to.

I have not considered that this bill of lading formed with the "Through Bill" annexed to the draft a second set of bill of lading for the same merchandise, but it was representing for the Credit Havrais the shipping documents, or ocean bill of lading, which are always sent to the receiver of the merchandise, and I considered them as equivalent to the "Master's Receipt."

Since then the through bill and the custody bill have remained in the possession of the Credit Havrais.

I annex the custody bill to the present interrogatory under the number 7.

1272 Interrogatory No. 20:

At the time the bank received the said bill of lading of the Compagnie Generale Transatlantique, hereafter called the custody bill of lading, did you or the bank know that said bill of lading attached to the draft was not genuine, but was forged or bogus?

Did you or the said bank know or believe at the time that said custody bill of lading represented cotton acquired and shipped by Steele, Miller and Company subsequenty to the drawing and forwarding of the said draft and the said attached bill of lading or did you and the bank believe that said custody bill of lading represented the same cotton as the bill of lading attached to the draft apparently represented?

What knowledge or information had you or the said bank at any time prior to the receipt of said custody bill of lading that Steele, Miller and Company intended to procure and forward to the bank said custody bill of lading?

It is charged on behalf of the complainant that at same time subsequent to the date of said draft and the attached bill of lading Steele, Miller and Company acquired and assembled one hundred bales of cotton, caused the same to be marked and numbered to correspond with the marks and numbers described in the said draft, and caused the same to be shipped to New Orleans and thence by steamer of the Compagnie Generale Transatlantique to Havre, being the same cotton represented by the said custody bill of lading. State what knowledge or information you or the said bank had of these alleged acts of

Steele, Miller and Company at the time the bank received said custody bill of lading.

To the twentieth interrogatory he saith:

When I received the custody bill of lading remitted by the Compagnie Generale Transatlantique, I was not aware that the bill of lading attached to the draft was not genuine, but falsed. I was not aware, neither, that this document was representing cotton acquired by Steele, Miller & Company, subsequently to the drawing. I believed that this new document concerned the same cotton as that which was represented by the bill of lading attached to the draft and was only the bill of lading delivered by the steamship company as continuation of the through bill.

1273.

At the time of receiving the custody bill of lading the Credit Havrais has no knowledge of the of Steele, Miller & Company concerning the purchase of the shipment of the S R U I, 100 bales cotton, per "Texas."

The facts alleged by the trustee were entirely unknown of myself and of the bank.

Interrogatory No. 21:

Please state whether on any prior occasion or occasions the said bank had received similar custody bills of lading purporting to represent the same cotton covered by through bills of lading attached to drafts for the price of the cotton, which had been previously accepted by the bank. If yes, state on what occasion, and what, if any, explanations were given, and whether the same were believed by the bank. Please answer this question fully.

What effect had such previous experience and explanation in causing the said bank to suspect or not to suspect fraud or wrong on the part of Steele, Miller and Company when it received said duplicating custody bill of lading covering the said one hundred bales of cotton?

To the twenty-first interrogatory he saith:

Previously to the remittance of the above custody bill, the Credit Havrais had received from Steele, Miller and Company, through Messrs. Scheuch & Company, similar documents, but for quantities of cotton of a little importance, by which its attention was not awakened in the belief that these

custody bills were constituting a continuation of document just referring to the same cotton represented by the through bill of lading attached to the drafts.

These custody bills, moreover, well represented
1274 the engagement of the ship to deliver the merchandise to Havre, and therefore were giving to me the certitude that cotton had been shipped.

Interrogatory No. 22:

State, if you know, when and how the said bank, or any representative thereof, learned for the first time that the said custody bill of lading did not cover, or was claimed not to cover, cotton shipped at the date of said bill of lading attached to said draft, but covered, or was claimed to cover, cotton subsequently acquired and shipped by Steele, Miller and Company.

It is charged by complainant that at the time Steele, Miller and Company delivered the cotton covered by the said custody bill of lading to the Compagnie Generale Transatlantique or at the the time it forwarded the said custody bill of lading to Havre, or at the time the same came into the physical possession of the Credit Havrais, the said bank knew or ought to have known that Steele, Miller and Company intended thereby to prefer said bank over their other creditors.

Please state whether said charge is true at any of said times, and give the reasons or facts upon which your answer is based.

To the twenty-second interrogatory he saith:

On the 29 April, 1910, the Credit Havrais learned by Messrs. Schench and Company of the suspension of Steele, Miller and Company. The information of this event did not give the reasons of the suspension to the Credit Havrais and, it was only much later, by correspondence from America, that the fraudulent acts of Steele, Miller and Company were known.

The 7th of May, 1910, when receiving the custody bill of the S R U I, 100 bales cotton per "Texas," the Credit Havrais was ignorant of the acts of Steele, Miller & Com-
1275 pany, because nine days only had passed between the suspension and the arrival of the document in the hands of the Credit Havrais, which has persisted to believe that the custody bill was referring to the cotton covered by the through bill of lading.

(No 23rd interrogatory.)

To the twenty-third interrogatory he saith:

When the Credit Havrais received the custody bill it did not believe that said remittance would be an advantage for the bank, because it was only the execution of the engagements of Steele, Miller & Company, of whose acts the Credit Havrais was ignorant.

Interrogatory No. 24:

When the Credit Havrais received the said custody bill of lading did it know or believe that it was thereby receiving an interest or right in or to the cotton purporting to be covered thereby in addition to what it believed it already had as acceptor of the said draft and the holder of the said bill of lading attached thereto?

To the twenty-fourth interrogatory he saith:

When receiving the custody bill the Credit Havrais was not acquiring any title or right in addition, but only a facility for obtaining the delivery of the cotton by the steamer, as the through bill alone, accompanied by a guarantee for the failing master's receipt, was sufficient to get delivery of the cotton on arrival.

Interrogatory No. 25:

Please state fully and in detail the extent and nature of the knowledge or information of the Credit Havrais as to the solvency or insolvency of Steele, Miller and Company at the time it accepted said draft, at the date of said cus-
1276 tody bill of lading and at the date when the same came into the actual physical possession of said bank. Give the nature, extent and source of the bank's information on the subject from day to day from the date of the reported failure of Knight, Yancey and Company.

If, in answer to previous question, you state that on April 29th, 1910, a cable was received by Schenck and Company from Steele, Miller and Company announcing that the latter had suspended payment, state what knowledge or information the said bank then had as to the assets or liabilities of Steele, Miller and Company or as to the sufficiency of their property at a fair valuation to pay their debts.

To the twenty-fifth interrogatory he saith:

The Credit Havrais, dealing for account of Messrs. Scheuch and Company, had not to look particularly after the situation of Steele, Miller and Company; in a general manner, however, the informations he had about that firm were favorable, and this good impression was subsisting when it accepted the draft drawn against the 100 bales cotton S R U I.

For the reasons given previously the Credit Havrais had not to watch the situation of Steele, Miller and Company, on account of the suspension of Knight, Yancey and Company. The Credit Havrais was always under the impression that the documents in its hands assured to its bank the possession of the cotton.

Interrogatory No. 26:

If, in answer to previous interrogatories, you have stated that the bank believed that the custody bill of lading represented the same cotton which had been paid for by the acceptors of the said draft, and which the bank was entitled to receive, state what effect, if any, knowledge of the insolvency of Steele, Miller and Company by the bank at the date of said custody bill of lading or at the date when it came into the physical possession of the bank would have had upon the belief of the bank that it was receiving only cotton to which it was entitled.

1277

To the twenty-sixth interrogatory he saith:

The advertisement of the suspension of the firm of Steele, Miller and Company did not alter in any way the impression the Credit Havrais had that it should receive the cotton to which it had the right and title, according to the documents then in its possession, and the same was the case on the 7th of May, when it received the custody bill issued by the Compagnie Generale Transatlantique.

Interrogatory No. 27:

State, if you know, the financial condition of Scheuch and Company and the individual members of said firm, and how long they have been in such financial condition.

To the twenty-seventh interrogatory he saith:

I have given the information asked, in my answer to the interrogatory number six.

Interrogatory No. 28:

There has been offered in evidence on behalf of the complainant in this cause a copy of a publication at Havre called the Bulletin de Correspondence of date April 27, 1910, which contains the following:

"Nous avons parle, hier, d'une nouvelle faillite aux Estate-Unis. A ce propos, on a recu, de Liverpool, le telegramme suivant; Plusieurs Maisons de coton seraient atteintes par la faillite de la Maison Steel, Miller & Co. de Memphis, qui faisait de nombreuses affairs avec l'Europe."

And a copy of the same publication, dated April 28, 1910, which contains the following:

"Cette semaine, les marches ont ete influences par deux sortes d'evenments. En premier lieu, on a apprais la faillite de deux Maisons d'exportation des Estate-Unis; si les details donnes se pouvaient que semer la mefiance et, par suite, amener un ratentissement des affairs, par contre, ils devaient contribeur au reaffermissement de cours, puisqu'ils indiquaient law possibilite de ne pas etre livre de coton achete, du moins dans le delais prevus. Il est a esperer, d'ailleurs, qu'l y de l'exageration dans toutes les rumeurs mises en circulation et que ce qui vient de se passer aura surtout pour resultat de faire rechercher les moyes qui assureront une plus grande securite a ceux qui deivent importer du coton."

1278 Please state whether the quoted paragraphs from said paper or either of them was read or known at the time by you or any representative of the Credit Havrais. Please state, if you know, any reports or information which came to you or the Credit Havrais at the time of said publication which tended to confirm or to discredit or cast doubt upon the correctness of the statements in said quoted paragraphs.

To the twenty-eighth interrogatory he saith:

The "Bulletin de Correspondence" is a publication which interests particularly the commercial firms, and, for this reason, it is rarely read by the bankers, therefore the two paragraphs reported in this interrogatory were unknown to

me, nobody in the Credit Havrais having remarked them, moreover, even if I had known them, it would not have changed my conviction that the 100 bales covered by the bill of lading per "Texas" were really those forming the supply for our acceptance.

Interrogatory No. 29:

There has been offered in evidence on behalf of the complainant in this cause a copy of a publication called the Liverpool Daily Port and Liverpool Mercury of date April 27th, 1910, which begins with the following head-lines:

"Cotton Market Outlook
Another American Firm
Suspends Payment
Disturbing Succession of
Unsettling News
The Knight, Yancey, Position.
Losses Smaller Than Originally
Feared;"

and the first paragraph of which is as follows:

1279 "The Liverpool cotton market has received further shocks to-day—first, by the alarming reports of new crop damage from frost, which many of the morning papers treated in 'scare' fashion; and later by the statement that another American firm, Mess. Steele, Miller and Co. of Memphis, had suspended payment. Liverpool, we understand, it [is] not largely affected by the failure, the losses falling chiefly on Bremen importers."

Please state whether the above article from said paper was read or known at the time by you or any representative of the Credit Havrais. Did you or any representative of the said bank receive any reports or information about the time of said publication which tended to confirm or to discredit and cast doubt upon the correctness of the statements in said quoted paragraphs. If so, state, if you have not already done so, what were said reports or information.

To the twenty-ninth interrogatory he saith:

The heading and the first paragraph of the article published

in "The Liverpool Daily Post and Liverpool Mercury," reported in this interrogatory, are unknown to me; I cannot give any indication about it.

Interrogatory No. 30:

Has the Credit Havrais any available means to be reimbursed or paid the drafts against said 100 bales of cotton, except through the sale of the said cotton in controversy in this suit?

To the thirtieth interrogatory he saith:

On account of the actual financial situation of the firm Schcuch & Company, the Credit Havrais has no means to be reimbursed of its acceptance, but only by the sale of the cotton litigant in this case.

Interrogatory No. 31:

Do you know, or can you set forth, any other matter or thing which may be a benefit or advantage to the parties at issue in this cause, or either of them, or that may be material to the subject of this your examination or the matters in question in this cause? If yea, set forth the same fully and at large in your answer.

1280 To the twenty-first [thirty-first] interrogatory he saith:

Having answered faithfully and with all sincerity to the questions in this interrogatory, I only want to express my confidence in the favorable issue of this suit, for the Credit Havrais, because its cause is right and said bank has always acted in good faith.

(Signed) J. CASTEL.
(Signed) J. B. BEECHER,
[Seal] Commissioner.

1281 Cross-Examination of JULES CASTEL, ESQUIRE.

First cross-interrogatory:

Please state whether the Credit Havrais has an agent within the City of New Orleans, State of Louisiana, or within the Eastern District of Louisiana.

1297 EXHIBITS ANNEXED TO DEPOSITION OF JULES CASTEL.

Filed October 24, 1911.

United States District Court, Eastern District of Louisiana.

J. A. E. Pyle, Trustee,
vs. No. 14,277
Texas Transport & Terminal Co. et al.

City of Havre,
Republic of France.

At the execution of a commission for the examination of witnesses in a case depending in the District Court of the United States for the Eastern District of Louisiana, wherein J. A. E. Pyle is complainant, and the Texas Transport and Terminal Company et als. are defendants, these exhibits, numbered 1 to 14 inclusive, were produced and sworn to by J. Castel, director of the Credit Havrais, of Havre, France, who subscribed his name to this certificate at the time of his examination.

(Signed) JOHN PRESTON BEECHER,
Vice Consul of the United States of America, at Havre, France, and Commissioner.

(Sig.) J. CASTEL.
[Seal]

1298 Exhibits numbered 2, 3, 4 and 5, being through bill of lading, insurance certificate, invoice and draft, omitted per instructions.

* * * * * * * *

1305 Scheuch & Co.
Havre.

Je/K.

Havre, May 7, 1910.

Credit Havrais,
E/V.
Gentlemen:

Enclosed we have the pleasure to remit you custody bill of lading for

S. R. U. I. 100 B.

for which you will please acknowledge receipt.

Accept, gentlemen, our sincere salutations.

p. pro. SCHEUCH & CO.
GEO. FREBOURG.

14277. Exhibit No. 6.

1306 Exhibit No. 7: Custody bill of lading. Omitted per instructions.

* * * * * * * *

Statement of Acceptances of the Credit Havrais of the Drafts of Mess. Steele, Miller & Co., Corinth, before the 1st of September, 1909.

Date of Drawings		Amounts	Date of Payment	No. of Bales	Marks
1909					
April 28th	Steele, Miller & Co., Corinth	$ 10,747.88	August 8th	200 B	R P E E 100 B R O O W 100 "
" "	"	15,471.51	" "	300 "	Q E J N 100 " R A K P 100 "
" 29th	"	15,065.53	" 10th	300 "	R B B O 100 " R E P Q 100 "
" "	"	5,014.10	" "	100 "	Q A K A 100 " R M V C 100 " R F O M 100 "
" "	"	5,031.98	" "	100 "	R O L G
May 6th	"	10,610.97	" 17th	200 "	R W O E 100 B R V K P 100 "
" "	"	15,930.81	" "	300 "	Q Q R K 100 " R X V W 100 "
" 7th	"	10,451.88	" "	200 "	R A O W 100 " R M R M 100 " R I M M 100 "

EXHIBIT No. 9.

Statement of Acceptances of the Credit Havrais of the Drafts of Mess. Steele, Miller & Co., Corinth, before the 1st of September, 1909.

Date of Drawings		Amounts	Date of Payment	No. of Bales	Marks
May 7th	Steele, Miller & Co., Corinth	15,814.27	August 17th	300 B	RFKO 100 B QELL 100 " QXON 100 "
" "	"	5,274.17	" 22nd	100 "	RATO
" 13th	"	10,578.93	" "	200 "	RTTA 100 " RMZX 100 "
" "	"	11,026.78	" "	200 "	RIAT 100 " QERT 100 "
" "	"	11,040.03	October 3rd	200 "	ROOC 100 " RXPR 100 "
June 23rd	"	5,571.69	" "	100 "	RMUA 50 " PGNE 50 "
" "	"	16,532.84	" "	300 "	SRUT 100 " SIAL 100 " SAAR 100 "
" "	"	11,187.37	" "	200 "	RWXO 100 " RRRK 100 "
" "	"	5,513.92	" "	100 "	RURX
" "	"	5,581.25	" "	100 "	RZOV

" "	"	8,653.95	"	10th	300 "	SAOX	100 B
			"	"		SXVQ	100 "
						RITN	100 "
" "	"	11,770.09	"	"	200 "	QAQQ	100 "
						RMOK	100 "
" "	"	5,818.92	"	"	100 "	SNOT	
" "	"	11,867.16	"	"	200 "	PGSV	100 "
						RHVG	100 "
" "	"	11,693.74	"	"	200 "	SIAA	100 "
						RQTV	100 "
" "	"	12,162.39	"	13th	200 "	SAXW	100 "
						SSSK	100 "
July 5th	"	12,332.81	"	"	200 "	SNIN	100 "
						RRKK	100 "
" "	"	12,346.55	"	"	200 "	SRSR	100 "
						ROOM	100 "
" "	"	12,271.94	"	"	200 "	SINP	100 "
						ROAA	100 "
					5300 "		
					5300 B/		
1309 1909.							
July 5th	Steele, Miller & Co.,	12,409.86	October	13th	200	RKKQ	100B/
						PKJJ	100 "
" 7th	Corinth	12,272.48	"	17th	400	RGFW	100 "
						SOKC	100 "

EXHIBIT No. 9.

Statement of Acceptances of the Credit Havrais of the Drafts of Mess. Steele, Miller & Co., Corinth, before the 1st of September, 1909.

Date of Drawings		Amounts	Date of Payment	No. of Bales	Marks
July 7th	Steele, Miller & Co., Corinth	12,379.52	October 17th	200	R E D Z 100 B R N N A 100 "
" "	"	12,343.62	" "	200	R E B X 100 " R W W X 100 "
" "	"	12,442.21	" "	200	R A D F 100 " R C B E 100 "
" "	"	12,241.60	" "	200	S G N I 100 " S A I T 100 "
" "	"	6,121.66	" "	100	R N W W R O O D
" "	"	12,306.85	" "	200	R A A A 100 "
" "	"	12,176.27	" "	200	P R I Z 100 " S S A B 100 "
" "	"	12,192.35	" "	200	S C F O 100 " S X X L 100 "
" "	"	12,398.02	" "	200	S M O M 100 " Q I A T 100 "
" "	"	6,102.47	" "	100	S I X O

EXHIBIT No. 10.

No. 2.

State of Acceptances of Credit Havrais of the Drafts of Mess. Steele, Miller & Co., Corinth, after the 1st of September, 1909.

Dates of Drafts 1909		Amounts	Date of payment	No. of Bales	Marks
	Steele, Miller & Co.,				
Sept. 2nd	Corinth	$5,716.61	Dec. 15th	100 B/	R C Z Z
" "	"	11,259.00	" "	200	Q A X D 100 G K O Z 100
" "	"	11,248.95	" "	200	Q D O X 100 Q A K O 100
" "	"	5,836.39	" "	100	R K O M
" "	"	5,869.97	" "	100	R K P Q
Oct. 22nd	"	6,875.87	Feby. 1st	100	(Q) S G E
" "	"	7,034.07	" "	100	(R) V A L
" "	"	6,709.30	" "	100	S I R L
" "	"	6,942.62	" "	100	R P Y N
" "	"	6,919.14	" "	100	R O H I
" "	"	6,790.47	" "	100	R O A C
" "	"	6,929.09	" "	100	R A W O
" "	"	6,640.67	" "	100	T E B T
" 23rd	"	6,940.52	" 2nd	100	R L O Y
" "	"	6,955.50	" "	100	R W A Q

EXHIBIT No. 10.

No. 2.

State of Acceptances of Credit Havrais of the Drafts of Mess. Steele, Miller & Co., Corinth, after the 1st of September, 1909.

Dates of Drafts 1909		Amounts	Date of payment	No. of Bales	Marks
Oct. 23rd	Steele, Miller & Co., Corinth	7,042.34	Feby. 1st	100	R K S O
" "	"	6,890.82	" "	100	S R G A
" "	"	6,997.94	" "	100	R A S I
" "	"	7,174.68	" "	100	R V A R
" "	"	7,060.67	" "	100	R R W S
" "	"	7,159.82	" "	100	R I M A
" 25th	"	7,028.09	" "	100	P T L L
" "	"	7,222.75	" "	100	R L O T
" "	"	7,121.24	" "	100	S C E N
" "	"	6,975.63	" "	100	R T V R
" "	"	7,166.98	" "	100	Q W E R
" "	"	7,146.21	" "	100	S K V S
" "	"	7,191.05	" "	100	O C E H
				3000 B/	
1311				3000 B/	
Oct. 25th	"	$ 7,114.90	Feby. 2nd	100	R B I P
" "	"	7,112.64	" "	100	R H E V

"	"	"	7,159.34	"	"	100	R I V E
"	"	"	7,136.20	"	3rd	100	R D I G
"	22nd	"	6,863.18	"	6th	100	R N E J
"	26th	"	6,897.16	"	"	100	V B V B
"	27	"	6,816.88	"	"	100	R G H H
"	30th	"	7,480.39	"	8th	100	Q E R E
"	"	"	7,462.55	"	"	100	S R S E
"	"	"	7,439.03	"	"	100	R V W V
"	"	"	7,358.29	"	"	100	S D O Y
"	"	"	7,322.41	"	"	100	S E A C
"	"	"	7,431.32	"	"	100	Q W I K
"	"	"	7,224.45	"	"	100	S D L R
"	"	"	7,426.44	"	"	100	S E X Q
"	"	"	7,529.71	"	"	100	R A W B
"	"	"	7,445.69	"	13th	100	R F O H
"	"	"	7 410.05	"	"	100	R O C W
Dec.	13th	"	7,335.17	Mch.	27th	100	S D I G
"	"	"	7,496.63	"	"	100	R C A A
"	"	"	7,465.25	"	"	100	Q F A T
"	"	"	7,580.74	"	"	100	R E M A
"	"	"	7,678.27	"	"	100	R E I C
"	18th	"	7,546.75	"	29th	100	Q A H O
"	"	"	7,543.71	"	"	100	Q A R E
"	"	"	7,455.59	"	"	100	R E A M
"	20th	"	7,691.54	"	30th	100	Q R L A
"	"	"	7,532.71	"	"	100	Q V I S

EXHIBIT No. 10. No. 2.

State of Acceptances of Credit Havrais of the Drafts of Mess. Steele, Miller & Co., Corinth, after the 1st of September, 1909.

Dates of Drafts 1909		Amounts	Date of payment	No. of Bales	Marks
Dec. 20th	Steele, Miller & Co.,	7,621.78	April 3rd	100	Q T V A
" 21st	Corinth	7,666.91	" "	100	R N O S
" "	"	7,581.94	" "	100	Q L N O
" 23rd	"	7,761.46	" 6	100	R S P I
" "	"	7,665.88	" "	100	R A F K
" "	"	7,782.22	" "	100	Q W E R
" "	"	7,667.29	" "	100	R M E S
				6500 B/	
1312				6500 B/	
Dec. 23rd	"	7,776.35	April 6th	100	R L O R
" "	"	7,609.35	" "	100	R O B V
" "	"	7,664.44	" "	100	R A R K
" "	"	7,787.92	" "	100	Q K I G
" "	"	7,640.09	" "	100	R Y A T
" "	"	7,752.54	" "	100	R A A R
" "	"	7,646.97	" "	100	R C A T
" "	"	7,582.56	" "	100	R R E N
" "	"	7,601.80	" "	100	R D O M

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"	"	"	7,652.98	"	"	100	Q Z T A
"	"	"	7,789.88	"	"	100	Q S N O
"	"	"	7,824.63	"	"	100	R A D Z
"	27th	"	7,670.67	"	10th	100	R F G V
Feby.	14th	"	7,498.79	May	25th	100	Q L E R
"	"	"	7,514.38	"	"	100	R D J K
"	15th	"	7,523.33	"	29th	100	R K O S
"	"	"	7,542.44	"	"	100	R D E R
"	"	"	7,543.18	"	"	100	Q P O O
"	"	"	7,423.46	"	"	100	R N T N
"	"	"	7,499.10	"	"	100	Q F E G
"	"	"	7,466.96	"	"	100	S R V I
"	17th	"	7,316.00	"	30th	100	R T G H
"	"	"	7,520.20	"	"	100	R M A S
"	"	"	7,557.55	"	31st	100	Q R A S
"	"	"	7,432.21	"	"	100	R L I A
"	21st	"	7,149.75	June	3rd	100	R C O L
"	"	"	7,184.19	"	"	100	R H E L
"	"	"	7,367.46	"	"	100	Q A T V
"	"	"	7,124.46	"	"	100	S C K R
"	16th	"	7,421.09	"	5th	100	Q R S Y
"	"	"	7,298.99	"	"	100	R B H K
"	18th	"	7,287.01	"	"	100	R T O V
"	"	"	7,396.93	"	"	100	R K A S

9800 B/

ND VERTICAL IN BOOK

1313 Memorandum.

Scheuch & Co.

Telephone 9, 12.

Havre.

25 De Le Bourse Street.

Havre, January 10th, 1910.

To M. Credit Havrais,
E/V.

Gentlemen:

Enclosed we remit you bill of lading for R. K. P. Q. 100 B. C. and request you to return us the through bill of lading.

Receive, gentlemen, our sincere salutations.

p. pro. SCHEUCH & CO.
By GEO. FREBOURG.

14277. Exhibit No. 11.

1314 Memorandum of

Scheuch & Co.

Telephone 9, 12.

25 De Le Bourse Street.

Havre, March 24, 1910.

To Credit Havrais,
E/V.

Gentlemen:—

We are enclosing port bill of lading for

S.	E.	L.	R.	100
S.	P.	Y.	N.	100
R.	U.	H.	I.	100
R.	R.	S.	O.	100
R.	A.	S.	E.	100

by s/s Memphian

R.	L.	O.	Y.	100
R.	E.	O.	H.	100
R.	O.	C.	W.	100

by s/s Kingstonian

and requesting that you kindly return the through bill of lading.

Receive, gentlemen, our sincere salutations.

p. pro. SCHEUCH & CO.
GEO. FREBOURG.

14277. Exhibit No. 12.

1315 United States District Court, Eastern District of Louisiana, New Orleans Division.

J. A. E. Pyle, Trustee,
vs. No. 14,240
Texas Transport & Terminal Company, et als.

Stipulation of counsel in the cases numbered 14,240, 14,241, 14,242, 14,243 and 14,277, whereby all the exhibits annexed to the foregoing depositions, except those included in the above offer, have, by agreement, been withdrawn because, in the opinion of counsel, they were irrelevant, cumulative or duplicates.

Offered by the Bank of Mulhouse, and referred to in its Note of Evidence.

Note:—

Copied into this transcript, at page 627 thereof.

1316 EVIDENCE ON BEHALF OF COMPTOIR D'ESCOMPTE DE MULHOUSE.

United States District Court, Eastern District of Louisiana, New Orleans Division.

J. A. E. Pyle, Trustee,
vs. No. 14,240
Texas Transport & Terminal Company, et als.

Note:—

Evidence offered on behalf of Comptoir d'Escompte de Mulhouse, as per its Note of Evidence copied into the tran-

script of appeal in the case entitled as above, and numbered 14,241 of the docket of the said Court, same as that offered on behalf of the Bank of Mulhouse.

1317 EVIDENCE ON BEHALF OF PAUL CHARDIN.

United States District Court, Eastern District of Louisiana, New Orleans Division.

J. A. E. Pyle, Trustee,
vs. No. 14,240
Texas Transport & Terminal Company, et als.

Note:—

Evidence offered on behalf of Paul Chardin, as per his Note of Evidence copied into the transcript of appeal in the case entitled as above and numbered 14,242 of the docket of the said Court, same as that offered on behalf of the Bank of Mulhouse.

1318 EVIDENCE ON BEHALF OF SOCIETE GENERALE.

United States District Court, Eastern District of Louisiana, New Orleans Division.

J. A. E. Pyle, Trustee,
vs. No. 14,240
Texas Transport & Terminal Company, et als.

Note:—

Evidence offered on behalf of Societe Generale, as per its Note of Evidence copied into the transcript of appeal in the case entitled as above numbered 14,243 of the docket of the said Court, same as that offered on behalf of the Bank of Mulhouse.

1319 EVIDENCE ON BEHALF OF CREDIT HAVRAIS.

United States District Court, Eastern District of Louisiana, New Orleans Division.

J. A. E. Pyle, Trustee,
vs. No. 14,240
Texas Transport & Terminal Company, et als.

Note:—
Evidence offered on behalf of Credit Havrais, as per its Note of Evidence, copied into the transcript of appeal in the case entitled as above and numbered 14,277 of the docket of the said Court, same as that offered on behalf of the Bank of Mulhouse.

1320 RESUMED HEARING AND SUBMISSION.

Extract From the Minutes.

November Term, 1911.

New Orleans, Tuesday, November 21st, 1911.
Court met pursuant to adjournment.
Present: Hon. Rufus E. Foster, Judge.

J. A. E. Pyle, Trustee,
vs. No. 14,240.
Texas Transport and Terminal Company, et als.

This cause, as continued from Monday, November 20th, 1911, for further hearing, was this day resumed:
Present: The solicitors for the respective parties, and was argued and submitted, when the Court took time to consider.

1321 OPINION OF THE COURT.

Filed December 28, 1911.

United States District Court, Eastern District of Louisiana.

J. A. E. Pyle, Trustee,

vs. No. 14,240

Texas Transport & Terminal Company, et als.

It appears that the firm of Steele, Miller & Company, domiciled at Corinth, Miss., were engaged in a large cotton exporting business, and, in the course of their business, drew nine drafts on the Bank of Mulhouse, aggregating about $66,000.00, and all in substantially the same form, of which the following is a fair sample:

"90 days after sight of this First of Exchange (Second unpaid) pay to the order of Ourselves.

Forty thousand two hundred and seventeen.....90/100 francs. Value received, and charge to account R.D.A.R. 1/100 Bales Cotton.

To Banque de Mulhouse.

Havre, France.

(Sig.) STEELE, MILLER & CO."

To these drafts were attached what purported to be nine railroad through bills of lading from points in Mississippi to Havre, France, each for 100 bales of cotton, shipped by Steele, Miller & Company to their own order, with instructions to notify Scheuch & Company, and indorsed in blank, but which were, in reality, entirely forged and fictitious, and no cotton at all had been actually shipped. There were also attached to the drafts the usual invoices and insurance certificates. Steele, Miller & Company discounted these drafts in the usual manner, and they were in due time accepted by the Bank of Mulhouse and ultimately paid.

Thereafter, Steele, Miller & Company assembled 900 bales of cotton at New Orleans, marked it and consigned it identically as represented by the forged bills of lading and shipped it to Havre by The Compagnie Generale Transatlantique, took for it port or custody bills of lading and mailed them to Scheuch & Company, who were their agents, with instructions to deliver

To the first cross-interrogatory he saith:

The Credit Havrais has no agent in the City of New Orleans nor in the Eastern District of the State of Louisiana.

Second cross-interrogatory:

State if your authorizations to Scheuch & Company to have drafts drawn on the Credit Havrais by Scheuch & Company's American customers was in any way different from the ordinary and customary method prevailing in Europe by which banks accept drafts, retaining possession of the documents until the acceptances have been discharged.

To the second cross-interrogatory he saith:

The operations between the Credit Havrais and Scheuch and Company were identical to those practiced by the banks in Europe, that is to say, that the American customers of Scheuch & Company were drawing on the Cradit [Credit] Havrais drafts, which documents relating to them, or the merchandise, were remaining in the possession of the bank, till complete discharge of the acceptances.

Third cross-interrogatory:

State if the Credit Havrais ever had at any time any relations or dealings with Steele, Miller & Company by which the said Credit Havrais purchased from Steele, Miller & Company any cotton, and state particularly if you purchased from Steele, Miller & Company the one hundred bales of cotton marked SRUI.

To the third cross-interrogatory he saith:

Never, the Credit Havrais bought directly cotton from Steele, Miller & Company.

1282 The acceptance against the 100 bales cotton marked S. R. U. I., was given for account of Scheuch & Company, as I have explained it, under the number 16 of the direct interrogatory.

Fourth cross-interrogatory:

If you answer that you did make a direct purchase of this cotton from Steele, Miller & Company, state whether or not the negotiations for the purchase were verbal or in writing, and if you answer that they were verbal, you will state the

date or dates on which these negotiations took place, and with whom and in the presence of whom; and if you should answer that the contract was in writing, you will annex to these interrogatories copies of any agreements and all correspondence leading up thereto, and you will permit the authority taking these dispositions to examine the original documents and papers and verify your statements, certifying that same are correct.

To the fourth cross-interrogatory he saith:

My answer to the preceding interrogatory exempts me from answering to this.

Fifth cross-interrogatory:

Please state whether it was and is your custom to purchase cotton in the American market for your own account, or whether or not your business, in so far as cotton is concerned, is confined to the accepting of drafts for account of your own customers.

To the fifth cross-interrogatory he saith:

The Credit Havrais, being a bank establishment, never buys merchandises for its own account; its operations consist especially to accept documentary drafts for account of its customers.

Sixth cross-interrogatory:

State whether or not you charge a commission for accepting drafts and whether the same is not the usual and customary commission charged by foreign banks, and attach to your depositions a statement showing the commissions charged by you on the acceptances for account of Schench & Company of the drafts drawn by Steele, Miller & Company.

To the sixth cross-interrogatory he saith:

The Credit Havrais charges a commission of 1/4%, on the amount of its acceptances for account of its cus-
1283 tomers. That rate is the one practiced usually.

I don't see the necessity to furnish a statement of commissions charged for the drafts of Steele, Miller & Company, the copy of account, asked for by the following cross-interrogatory, giving this indication.

Seventh cross-interrogatory:

File with your deposition a copy of the account of Scheuch & Company with your house from September 1, 1909, to date. Permit the notary to examine the original books and papers showing the account so as to verify your statements as being correct.

To the seventh cross-interrogatory he saith:

According to the wish expressd by this interrogatory, I annex under the number 8, an extract of the account of Messrs. Scheuch & Company with the Credit Havrais, from 1st July, 1909, till this day, and I hold the original books to the disposition of every person duly authorized for verification of them.

Eighth cross-interrogatory:

What drafts of Steele, Miller & Company had you accepted under your arrangement with Scheuch & Company previous to September 1, 1909? Attach to your depositions a statement of the drafts, the marks of the cotton supposed to have been secured by bills of lading, the dates the said drafts were drawn and the dates the said drafts were paid; and state particularly whether or not they were paid by you by the sale of the cotton, and is [if] so, attach to these depositions a statement showing the disposition of the cotton, to whom sold and how the proceeds were applied.

To the eighth cross-interrogatory he saith:

I annex under number 9 a statement of the drafts drawn before the 1st September, 1909, by Steele, Miller & Company on the Credit Havrais, for account of Scheuch and Company.

All these acceptances were settled by the net proceeds of the sale of the cottons. I cannot, however, exhibit the accounts of sales, these accounts having been established by Messrs. Scheuch and Company.

1284 For the surplus of this cross-interrogatory, the Extract of Account-Current exhibited with the number 8, contains all the indications asked for.

Ninth cross-interrogatory:

Attach to these depositions a statement of drafts drawn by Steele, Miller & Company against your bank and accepted

by you under your engagement d'importation from September 1, 1909, up to and including the last draft accepted previous to the bankruptcy proceedings, to-wit, May 4, 1910. Describe each draft, describe the character of security attached, (bill of lading), give the date on which each draft was accepted and the date on which each was paid or discharged, and state particularly how discharged, and state whether the draft was paid by the sale of the cotton by your bank, or by Scheuch & Company; and if you state the drafts were paid by the sale of the cotton by your bank, then attach a statement showing the sale, to whom made and how the proceeds were applied.

To the ninth cross-interrogatory he saith:

I annex under the number 10 a statement of the drafts drawn from 1st September, 1909, to 7th March, 1910, on the Credit Havrais, by Steele, Miller & Company for account of Scheuch and Company.

All these acceptances were settled under the conditions of the interrogatory previous to the present.

Tenth cross-interrogatory:

To what extent is Scheuch & Company indebted to your bank at this time and what security have you for any such indebtedness?

To the tenth cross-interrogatory he saith:

The Extract of the Account-Current of Scheuch & Company that I have annexed under number 8, is answering to the question of this interrogatory.

Eleventh cross-interrogatory:

Attach to your depositions a statement of your acceptances against American cotton during the season of 1909 and 1910, that is, beginning from September 1, 1909, and ending August 31, 1910. What was the total amount of drafts accepted by you during the cotton seasons of 1909 and 1910 against American cotton?

1285 To the eleventh cross-interrogatory he saith:

The professional secret prevents me to give the statement which is asked to me by this interrogatory.

I can, however, without inconvenience, declare that during

the season 1909-1910, the Credit Havrais has accepted drafts drawn on it, for 140,839 bales cotton for a total value of fcs. 50,761,377.87.

Twelth cross-interrogatory:

When did you last accept any cotton drafts for account of Scheuch & Company drawn by Steele, Miller and Company, or Knight, Yancey & Company ?

To the twelfth cross-interrogatory he saith:

The last acceptance of the Credit Havrais to the drafts of Steele, Miller & Company, was given the 7th of March, 1910.

Concerning Knight, Yancey & Company no draft was issued by that firm, during the season 1909-1910, for account of Scheuch and Company.

Thirteenth cross-interrogatory:

Did you limit acceptances for Scheuch & Company? If you state that you limited Scheuch & Company in the amount of acceptances for account, give your reason for not continuing to accept, and did you at the same time discontinue accepting cotton drafts for other houses?

To the thirteenth cross-interrogatory he saith:

The drawings of Steele, Miller & Company were resulting of an agreement between the Credit Havrais and Scheuch & Company for a determined number of bales of cotton.

This agreement has never been dissolved by the bank, and in the time of the suspension of Steele, Miller & Company, said house had yet an authorization for one thousand bales of cotton for the amount of which, the said firm could have drawn on the Credit Havrais.

It was also the same for the other customers of the Credit Havrais, whose operations were continued for the quantities of cotton agreed to.

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Fourteenth cross-interrogatory:

At the time of the failure of Knight, Yancey & Company had you accepted for account of Scheuch & Company, or any other party, drafts of Knight, Yancey & Company. If you answer yes, annex to your deposition a statement of each draft, together with a statement of the bills of lading attached

to these drafts, and state whether or not these obligations have been paid and by whom, or whether or not you now hold same.

To the fourteenth cross-interrogatory he saith:

At the time of the failure of Knight, Yancey & Company the Credit Havrais had no acceptance open, drawn by said firm.

Fifteenth cross-interrogatory:

Was your bank aware of the delay in the arrival of the cotton for which it had accepted drafts of Knight, Yancey & Company and Steele, Miller & Company?

To the fifteenth cross-interrogatory he saith:

The Credit Havrais was looking after the arrival of the cotton concerning its bank, and was establishing that, since two seasons, the delays of transportation was always increasing; this fact, however, was not particular to it; all the receivers were in the same case, and Messrs. Scheuch & Company, called upon this subject, answered that the delay ought to be caused by congestion of the railway's stations, and at the ports.

Sixteenth cross-interrogatory:

If you answered yes to the fifteenth cross-interrogatory state whether or not you made any complaint as to these delays to the steamship lines, and if you should answer yes, state whether the complaints were made verbally or in writing, and if you answer the complaint was made verbally, state to whom made and in the presence of whom, and if you answer the complaint was made in writing, annex to your deposition copies of the complaints, together with the replies you received, and submit the originals to the authority taking these depositions that he may compare them with the copies and certify the copies as being correct.

1287 To the sixteenth cross-interrogatory he saith:

I have not addressed any cliam [claim] to the line of steamers.

Seventeenth cross-interrogatory:

During the latter part of January or the early part of

February, 1910, did you not stop the line of credit extended to Scheuch & Company by way of acceptances. If you answer yes, state why you stopped said line of credit, and state whether or not you gave notice of this fact to Scheuch & Company. If you answer yes, state whether said notice was verbal or in writing. If verbal, give the date or dates when given, to whom and in the presence of whom. If you gave such notice in writing, attach to your depositions a copy of such notice or notices and submit the originals to the authority taking these depositions to the end that he may compare same with these copies and verify them as being correct.

To the seventeenth cross-interrogatory he saith:

As I have declared in the cross-interrogatory number 13, the Credit Havrais at no moment stopped the reimbursement credit opened to Scheuch and Company.

Eighteenth cross-interrogatory:

Under the direct interrogatory number twenty-one you have been asked to explain the circumstances of your receipt of the custody bills of lading. In answering this interrogatory you will annex all correspondence that you may have had with Scheuch & Company, or any one else on the subject; you will state whether or not you made any inquiry of the Compagnie Generale Transatlantique as to how two sets of bills of lading for the same cotton could be in existence at the same time. If you state that you made inquiry of the Compagnie Generale Transatlantique or any source other than Scheuch & Company, you will state whether this inquiry was verbal or in writing; if you answer verbal, state the date or dates when made, to whom the inquiry was addressed and in the presence of whom, and if you answer this inquiry was made in writing, you will attach to your deposition a copy of the communications written by you and received in reply, and you will submit the originals to the authority taking these depositions to the end that he may compare them with the copies and certify the copies as being correct.

1288 To the eighteenth cross-interrogatory he saith:

The explanations that I have given to the direct interrogatory under number 19, fully answer to the question made by this cross-interrogatory, relatively to the custody bills

of the Compagnie Generale Transatlantique, to which I did not address any question about this document.

Nineteenth cross-interrogatory:

Under the eleventh cross-interrogatory you have been asked to state the amount of business done by you in accepting cotton bills of lading in the season of 1909 and 1910. You will state at this time whether or not in any of these transactions you permitted the substitution of custody bills of lading for through bills of lading. If you answer that you did, you will give the names of the firms by which this substitution was performed, the dates of the drafts, the amounts of the drafts, the dates of the through bills of lading and the dates of the custody bills of lading. We charge you that we are not discussing captains or mates receipts, but are asking solely, if in your experience with American cotton shippers other than Steele, Miller & Company, any case has ever arisen by which port bills of lading and custody bills of lading were in existence for the same cotton, and at the same time that the original bills of lading were in your possession. You will answer this question fully, and, as stated above, you will give the names of any American cotton houses by, with and through whom any such transactions occurred.

To the nineteenth cross-interrogatory he saith:

During the season 1909-1910, as well as during the previous seasons, no other firm besides Steele, Miller & Company did ever remit to us custody bills to be exchanged against through bills of lading.

Twentieth cross-interrogatory:

You have previously been asked whether or not you had any dealings with Knight, Yancey & Company and whether or not you held in your possession any accepted drafts of Knight, Yancey & Company about the time of the failure of Knight, Yancey & Co. If you answered yes, state whether or not when the failure of Knight, Yancey & Com-
1289 pany was announced you made any inquiry concerning the cotton presumably covered by your bills of lading, and if you answer that you did, attach to your depositions copies of the inquiries, together with the replies thereto.

To the twentieth cross-interrogatory he saith:

As I have declared previously, the failure of Knight, Yancey and Company, was without interest for the Credit Havrais.

Twenty-first cross-interrogatory:

Did you or did you not know at the time of the failure of Knight, Yancey and Company, that the said firm of Knight, Yancey & Company had carried on its business by forging bills of lading, and if you answer yes, state whether or not this was a matter of general knowledge at Havre at that time.

To the twenty-first cross-interrogatory he saith:

At the time of the suspension of Knight, Yancey and Company the fraudulent acts of this house were absolutely unknown in Havre.

Twenty-second cross-interrogatory:

Did you have any conversation with C. H. G. Linde of Steele, Miller & Company between January and May, 1910, and if you say that you did, repeat this conversation.

To the twenty-second cross-interrogatory he saith:

I don't know Mr. C. H. G. Linde, who did not pay me a visit when he came to Havre at the beginning of 1910.

Twenty-third cross-interrogatory:

File as an exhibit to your deposition all correspondence, telegraphic or otherwise, that passed between your bank and Scheuch & Company, and between your bank and any American firm or individual, between January and May, 1910, inclusive, with reference to the business of Steele, Miller & Company, or Knight, Yancey & Company. Attach as an exhibit all correspondence, telegraphic or otherwise, that passed between your bank and Scheuch & Company and the German-American National Bank of New Orleans, or A. Breton, its vice-president, or the Whitney Central National Bank of New Orleans, or the Canal-Louisiana Bank and Trust Company of New Orleans, or the Hibernia Bank and Trust Company of New Orleans, or any other bank or banker, between April 18, 1910, and May 15, 1910.

1290 To the twenty-third cross-interrogatory he saith:

I sent no telegraphic dispatch to any banks or any commercial firms in America relatively to the affair of Steele, Miller & Company between the dates mentioned.

Twenty-fourth cross-interrogatory:

State whether or not you permitted Scheuch & Company to make a habit of swapping bills of lading in all transactions had between you, and state when for the first time you permitted the substitution of said bills of lading. When you have fixed the date of the first substitution, state what you did with the supposed original through bills of lading. Did you return them to Scheuch & Company, and if so, did you take a receipt or writing from Scheuch & Company, and if you answer yes, annex to your deposition a copy of any receipt or writing which you may have taken from Scheuch & Company.

To the twenty-fourth cross-interrogatory he saith:

The exchange of bills of lading was done twice through Messrs. Scheuch and Company on the following dates, as it is proved by their memorandums which I annex under numbers 11 and 12:

13th of January for 100 bales of cotton, &
24th of March for 800 bales of cotton.

These port or custody bills of lading, that the Credit Havrais received, were always considered as a continuation of the through bills of lading accompanying the drafts, and as such, they have not retained our attention.

The through bills of lading then were remitted to Messrs. Scheuch & Company, upon their demand, without requiring receipts from them.

Twenty-fifth cross-interrogatory:

What other firm besides Steele, Miller & Company ever engaged in this business of exchanging bills of lading for the same cotton or for any other article? State specifically the name of any firm or individual, except Steele, Miller & Company, which substituted bills of lading covering the same cotton without filing evidence of the fact that it was done by and with the consent of the transportation company.

1291 To the twenty-fifth cross-interrogatory he saith:

I don't know any firm having exchanged bills of lading for the same merchandise; referring, furthermore, to my previous answer.

Twenty-sixth cross-interrogatory:

State whether you permitted the swapping of bills of lading by Knight, Yancey & Company and what official of your bank permitted it to be done.

To the twenty-sixth cross-interrogatory he saith:

The firm of Knight, Yancey & Company never asked to [of] the Credit Havrais exchange bills of lading.

Twenty-seventh cross-interrogatory:

State further what official of your bank permitted the substitution of bills of lading by Steele, Miller & Company. In answering this question, mention the exact transaction in which this proceeding took place.

To the twenty-seventh cross-interrogatory he saith:

I personally have authorized the delivery of the through bills of lading claimed, and I beg to refer in this respect to my answer to the Cross-Interrogatory Number 24.

Twenty-eighth cross-interrogatory:

File as an exhibit to your deposition all correspondence, telegraphic or otherwise, which you had with the Compagnie Generale Transatlantique between January 1, 1910, and June 30, 1910, touching movements of cotton by Steele, Miller & Company and Knight, Yancey & Company. Submit the originals to the authority taking these depositions that he may compare them with the copies and certify the copies as being correct.

To the twenty-eighth cross-interrogatory he saith:

Between the dates stated, I have exchanged with the Compagnie Generale Transatlantique only a letter relative to the discharging of the 100 bales S. R. U. I. by order of the Court.

I annex a copy of said letter under the number 13.

Twenty-ninth cross-interrogatory:

Give the date that you exchanged the bill of lading attached

to the draft accepted by you for the one hundred bales of cotton marked SRUI for the custody bill of lading; give the hour of the day, the name of the individual who delivered the bill of lading and a copy of the entry made on your books of this transaction. Permit the authority taking
1292 these depositions to examine the original books to the end that he may compare them with the copy and certify the copy as being correct. State whether or not you still hold both the through bill of lading and the custody bill of lading. If you answer that you do, state whether at the time of previous exchanges you surrendered the through bills of lading, and if you answer yes, explain why you considered it necessary to retain both original and through bill of lading at this particular time.

To the twenty-nine cross-interrogatory he saith:

As I have declared to the number 19 of the direct interrogatory, it is on the 7th of May, 1910, that Steele, Miller & Company handed to the Credit Havrais, through Scheuch & Company the custody bill of the S. R. U. I.—100 bales cotton per "Texas."

This document was not exchanged but annexed to the original bill of lading, and these two pieces, since then, remained in the possession of the Credit Havrais.

I cannot furnish a copy of any book in which the custody bill was entered, because the letter of Messrs. Scheuch & Company, annexed to my deposition, is the only evidence for the date.

Thirtieth cross-interrogatory:

Attach to your depositions a copy of the charter and by-laws of your corporation. It may be that you do not understand the words charter and by-laws. What we desire you to attach is a copy of the authority by which your corporation exists, together with the rules of business of your corporation.

To the thirtieth cross-interrogatory he saith:

Under number 14 I annex to this cross-interrogatory a copy of the Credit Havrais statutes.

Thirty-first cross-interrogatory:

Is it a custom of the banks doing business in France, and

particularly your bank, to speculate in cotton, grain, sugar or other such commodities?

To the thirty-first cross-interrogatory he saith:

It is not the custom in France that the banks speculate, and, particularly, the Credit Havrais does not speculate.

1293 Thirty-second cross-interrogatory:

Are you acquainted with the following institutions: Paul Chardin, Bank de Mulhouse, Comptoir d'Escompte de Mulhouse and Societe Generale?

To the thirty-second cross-interrogatory he saith:

I know the firm Paul Chardin, and also the agencies of the Banque de Mulhouse, Comptoir d'Escompte de Mulhouse, and Societe Generale.

Thirty-third cross-interrogatory:

If you answer yes, state whether you know if it is a custom of all, or any of them, to speculate in cotton, grain, sugar or other commodities by direct purchases from the American merchants, and then protect these purchases by buying or selling cotton futures.

To the thirty-third cross-interrogatory he saith:

I think that the firm Paul Chardin do not speculate, but I can affirm that the agencies of Societies of Credit don't engage them in any speculative operation.

Thirty-fourth cross-interrogatory:

If so, state each and every case in which your bank has bought or sold cotton, sugar or grain?

To the thirty-fourth cross-interrogatory he saith:

The Credit Havrais never has bought merchandises for its own account.

Thirty-fifth cross interrogatory:

If you answer that you purchased cotton or other commodities, state how many bales you purchased in the last year; what facilities you have for receiving and storing such cotton. Give the name of the man or men in charge of your spot

cotton department. Give the names of the parties from whom you have purchased cotton and the parties to whom you have sold cotton. Attach copies of all account sales and generally enlighten us as to the method of carrying out your cotton department.

To the thirty-fifth cross-interrogatory he saith:

It is answered by the previous cross-interrogatory.

Thirty-sixth cross-interrogatory:

If you say you purchased other commodities in the open market and sold same in the open market, give a full statement of these speculations.

1294 To the thirty-sixth cross-interrogatory he saith:

Same answer.

Thirty-seventh cross-interrogatory:

In the above styled cause, Elisee Paul Dubois filed an affidavit in which he makes oath as follows:

"Prior to the year 1909, the business of the Societe Generale with Scheuch & Company was small and unimportant. In 1909 the bank extended its engagement d'importation with that firm to 5,000 bales of cotton, that is to say, it authorized that firm to have drafts drawn on it for the purchase price of cotton accompanied by documents giving it title to the cotton, provided draft drawn outstanding at any one time should not exceed 5,000 bales. The arrangement included the sale of futures in the name of the bank, contemporaneously with the drawing of each draft and corresponding in amount and price with the cotton purchased. The bank had had no concern with or knowledge of the contracts or arrangements between Scheuch & Company and the shippers of cotton and extended no credit to the shippers."

Please state whether or not this statement would be correct if applied to your bank instead of the Societe Generale. State whether or not your dealings concerning this cotton were under the terms and conditions described by Mr. Dubois, correcting of course any defects in figures as to the number of bales forming the basis of the credit.

To the thirty-seventh cross-interrogatory he saith:

The affidavit of E. P. Dubois, Esquire, director of the

Societe Generale's Agency, is exact and can be applied entirely to the operation of the Credit Havrais with the firm of Scheuch and Company, with, however, the difference only, that the credit in number of bales at the moment of the suspension of Steele, Miller & Company amounted to 8,000 bales; as much in warehouse, as in sea.

Thirty-seventh cross-interrogatory:

Affidavits made by the witnesses for the Societe Generale, Bank de Mulhouse, Comptoir d'Escompte de Mulhouse and Paul Chardin set forth the following statement:

On April 20th it was reported in Liverpool that Knight, Yancey & Company were in difficulties, and this report was known at Havre on April 21, 1910. There was no report or rumor then in respect to Steele, Miller & Company. On Saturday evening, April 23rd, Scheuch & Company received from Bremen a telegram stating that a bank of that city refused to accept drafts of Steele, Miller & Company, and they communicated this to the Societe Generale with the statement that the refusal of the Bremen house was as
1295 a matter of precaution, on account of the frauds of Knight, Yancey & Company, but without any knowledge that Steele, Miller & Company had acted in the same manner. We asked Scheuch & Company to cable Steele, Miller & Company for information. In the meantime, on April 26th, there arrived the said custody bills of ladings, and, pending further information, we decided to hold both the custody bills of lading and the through railroad bills of lading. Afterwards, on the evening of April 26th, a house at Havre received from New Orleans a cable announcing the failure of Steele, Miller & Company, but the next day that house received a cable from the same correspondent telling it not to reveal the telegram of the day before because it had not been confirmed. Finally, on April 29th, Scheuch & Company received from Steele, Miller and Company advice by cable that they had suspended.

Please state whether this is correct.

To the thirty-eight cross-interrogatory he saith:

The declaration exposed in the affidavit of Messrs. Paul

Chardin and of the directors of the agencies of Societe Generale Banque de Mulhouse, and Comptoir d'Escompte de Mulhouse, is exact. (Signed) J. CASTEL.

(Signed) J. P. BEECHER,
[Seal] Commissioner.

1296 City of Havre,
Republic of France. ss.

I, J. P. Beecher, Vice Consul of the United States of America, at Havre, France, do certify that J. Castel, the witness, personally appeared before me on the 30th day of September, 1911, at 2 o'clock in the afternoon, at the Consulate of the United States at Havre, in the Republic of France, and, after being duly sworn, to testify the truth, the whole truth, and nothing but the truth, did depose to the matter contained in the foregoing deposition, and did in my presence, subscribe the same and certify to the authenticity of the exhibits. I certify that I have subscribed my name to each half sheet thereof, and further certify that according to cable instructions sent to Messrs. Scheuch & Co., of Havre, France, on September 4, 1911, by J. P. Blair, attorney, the attestation of each exhibit has, (in view of their great number), been waived.

Witness my hand and official seal, the day and year above written. (Signed) JOHN PRESTON BEECHER,
Vice Consul of the United States
of America, at Havre, France.

Deposited in the postoffice at Havre, France, this 11 day of October, 1911.

(Signed) JOHN PRESTON BEECHER,
[Seal] Vice Consul of the United States
of America, at Havre, France.

(Twelve $2.50 American Consular Service
(Fee Stamps, each stamped across face with
(red ink, 30 Sep. 1911.

Consular fee	$30.00
Services of clerk for copying deposition..	27.50
Total	$57.50

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them to the bank in exchange for the false through
1322 bills of lading annexed to the drafts.

Shortly after shipping the cotton, and before it had actually left the United States, Steele, Miller & Company were adjudicated bankrupts and their trustee brought his bill of complaint against the Bank of Mulhouse, against Scheuch & Company, and against the Compagnie Generale Transatlantique and its agent at New Orleans, the Texas Transport & Terminal Company, in whose custody the cotton then was, to recover the said 900 bales of cotton, on the ground that the shipment constituted a voidable preference.

For reasons previously filed, a preliminiary injunction issued, restraining the carrier from removing the cotton out of the jurisdiction of this Court, but the bank was permitted to take over the cotton on bond. So, for the purposes of this decree, Scheuch & Company and the carrier and its agent may be considered nominal parties.

It is contended by the bank that the transaction between it and Steele, Miller & Company is in the nature of a sale, and that, by marking the cotton and shipping it, Steele, Miller & Company appropriated it to the contract before bankruptcy; that Steele, Miller & Company did not intend to create a preference, and that, even if they did, the bank did not know, and had no notice, constructive or actual, of the insolvency of Steele, Miller & Company and an attempt to prefer it.

But the trustee contends that Steele, Miller & Company substituted good collateral for documents of no value, and thereby created a voidable preference, which he is suing to set aside and as trustee he is not estopped. I cannot agree with these contentions.

The method of doing business which the parties had adopted was as follows: Steele, Miller & Company would consign their cotton to Scheuch & Company on negotiable bills of lading to their own order and annex these bills, properly indorsed, together with other documents usual in the cotton trade, to drafts drawn on the various banks at Havre
1323 with whom Scheuch & Company had previously arranged for credits. The banks would accept and ultimately pay these drafts and hold the cotton as security for their reimbursement. Scheuch & Company would sell futures against the cotton to protect the banks from market fluctua-

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tions, and in the usual course of business would dispose of the cotton after it arrived, and then reimburse the banks. The banks would then release the cotton to Scheuch & Company or the purchaser.

Under this arrangement, it seems to me that Steele, Miller & Company parted with the ownership and control of the cotton the moment they shipped it and drew on the bank for its value. And it will be noted in this connection that the drafts are to be charged to account of the cotton and not to the account of Steele, Miller & Company. Steele, Miller & Company at times remitted funds to Scheuch & Company in settlement of their mutual accounts, but these were to reimburse the banks for losses on the out-fall of the cotton, such as differences in grade or weight, for which they were of course liable, or to take up drafts that had been drawn in excess of their line of credit. I can see no difference in principle between these transactions and out and out sales.

When Steele, Miller & Company had obtained the bank's money by falsely pretending they had shipped the cotton against which the draft was drawn, and on the faith of which purported shipment the bank had accepted and paid the draft, there is no reason why they could not afterwards appropriate the actual cotton to the contract, and by shipping it, consigned and marked precisely as represented in the forged bills of lading, they did so. The Idaho, 93 U. S. 575. It is immaterial in this case they took out port, instead of through bills of lading. It was immaterial what they might do with the genuine bills of lading, provided no rights of innocent third persons were affected. That they sent them to the bank to be substituted for the forged ones but strengthens the facts showing appropriations. It did not constitute a
1324 change of securities.

Steele, Miller & Company appropriated the cotton to the contract and the transaction was entirely complete before bankruptcy. They would have been estopped to assert any claim to it, and the trustee is in no better position.

While I do not consider the question of voidable preference is presented in this case, and prefer to rest my decision on the above reasons, perhaps it is but fair to the defendant to say that I am not convinced that Steele, Miller & Company intended a preference, as it seems to me they uniformly discounted drafts purporting to be secured by bills of lading for

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cotton, which were in reality forged, and thereafter shipped the cotton to prevent discovery of their dishonest methods, and that their transactions with the banks were in the usual course of business and without any intention on their part other than to conceal their true methods. Furthermore, while the facts on which they might be charged with notice ought to have excited the suspicion of the bank, I am not prepared to say that they had knowledge, constructive or actual, of Steele, Miller & Company's insolvency, or that a preference was intended. Tumlin vs. Bryan, 165 Fed. 168.

There will be a decree in favor of the bank, adjudging it to be the owner of the cotton and dismissing the bill as to it, but the bill will be retained for further proceedings on other branches of the case.

1325 DECREE.

Entered and Filed January 1, 1912.

United States District Court, Eastern District of Louisiana.

J. A. E. Pyle,

vs. No. 14,240

Bank of Mulhouse, Compagnie Generale Transatlantique, Texas Transport and Terminal Company, and Scheuch and Company.

In equity.

Decree.

This cause came on to be heard at this term and was argued by counsel and taken under advisement by the Court, and, upon consideration thereof, it is now ordered, adjudged and decreed, as follows, viz.:

That complainant's bill be and it is hereby dismissed as to defendant, the Bank de Mulhouse, at cost of complainant, to be taxed; that the injunction pendente lite heretofore issued in this cause be, and the same is hereby, dissolved; and that the Bank of Mulhouse be, and the same is hereby, declared to be the owner of the cotton referred to in the bill of com-

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plaint and covered by the bond herein given; and that the demands of the complainant against the said Bank of Mulhouse be denied.

The Court hereby expressly reserves for further consideration all matters not herein expressly provided for, including the rights and claims of the Compagnie Generale Transatlantique against complainant and the rights and claims of all parties defendant, under the injunction bonds herein given, as well against the sureties on said bonds as against the complainant, and as to all such matters the bill is retained for further proceedings.

(Signed) RUFUS E. FOSTER, Judge.

January 1st, 1912.

1326 PETITION AND ORDER FOR APPEAL.

Filed March 1st, 1912.

United States District Court, Eastern District of Louisiana.

J. A. E. Pyle, Trustee,
versus No. 14,240
Texas Transport & Terminal Company, et als.

The petition of J. A. E. Pyle, trustee, complainant in the above numbered and entitled cause, with respect represents:

That complainant considers himself aggrieved by the decree made and entered in this cause on the 1st day of January, 1912, and,

That he desires and hereby appeals from said decree to the United States Circuit Court of Appeals for the Fifth Circuit, and presents herewith, and makes part of this petition, as Exhibit "A" hereto, assignments of error in said decree.

Wherefore, the premises considered, petitioner prays that his appeal may be allowed to operate as a supersedeas upon the giving of a bond with surety in an amount to be fixed by the Court, and conditioned according to law; and that a transcript of the whole record, proceedings, testimony and papers upon which said decree was made, duly authenticated, be sent to the United States Circuit Court of Appeals for the

Fifth Circuit, in the manner and form and at the time prescribed by law, and by the practice of said Court; that citation issue to Bank de Mulhouse, through its solicitors of record, Denegre and Blair; to Compagnie Generale Transatlantique, through its agent, W. H. Hendren; to the Texas Transport & Terminal Company, through its agent, W. H. Hendren, in the manner and form prescribed by law; for a correction of said errors and a reversal of said decree, and for such other and further relief as may be proper in the premises.

(Signed) W. A. PERCY.
(Signed) DUFOUR & DUFOUR,
Solicitors.
3/1/12 (Signed) DENEGRE & BLAIR,
Solrs.
(Signed) GEO. H. TERRIBERRY,
Sol. for Compagnie Generale Transatlantique
and Texas Transport & Terminal Co.

1327 ORDER.

Considering the foregoing petition, it is ordered that an appeal be allowed to the said complainant, returnable to the United States Circuit Court of Appeals for the Fifth Circuit, within thirty days from the date thereof, and that same operate as a supersedeas upon the said complainant furnishing bond with a good and solvent surety, according to law, in the sum of two hundred dollars.

(Signed) RUFUS E. FOSTER, Judge.

Mar. 1/12.

1328 ASSIGNMENT OF ERRORS.

Filed March 1st, 1912.

United States District Court, Eastern District of Louisiana.

J. A. E. Pyle, Trustee,
versus No. 14240.
Texas Transport & Terminal Company, et als.

Assignments of Error.

Now comes J. A. E. Pyle, trustee in bankruptcy of Steele, Miller & Company, appellant, by his attorney, and says that, in the record and proceedings aforesaid, of the United States District Court for the Eastern District of Louisiana, in the above entitled cause and in the decree therein rendered on the 1st day of January, 1912, manifest error hath intervened to the prejudice of said appellant, in this, to-wit:

(1) The Court erred in rendering and entering a decree dismissing the bill of complaint of J. A. E. Pyle, trustee in bankruptcy of Steele, Miller & Company.

(2) The Court erred in rendering and entering a decree in favor of the defendant.

(3) The Court erred in holding that the Bank of Mulhouse was the owner of the cotton described in the bill of complaint and covered by the bond herein given.

(4) The Court erred in holding that, by delivering the actual cotton to the carriers, Steele, Miller & Company intended to appropriate, and did appropriate, said cotton to the fraudulent bills of lading theretofore acquired and held by the defendant, the Bank of Mulhouse.

(5) The Court erred in holding that the defendant bank was in fact a purchaser of actual cotton from Steele, Miller & Company.

(6) The Court erred in failing to find and hold that the de-

fendant knew, or ought to have known, or had reasonable grounds to believe, that Steele, Miller & Company were insolvent at the time the defendant received the genuine bills of lading representing cotton actually shipped, referred to in the bill of complaint.

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(7) The Court erred in failing to find and to hold that Steele, Miller & Company, by delivering the genuine bills of lading to the defendant representing cotton actually shipped, thereby intended to prefer and did prefer said defendant to and over its other creditors and thereby intended to grant, and did grant, an illegal and unfair preference to the defendant, and that the defendant did receive a preference within the meaning and intendment of the bankrupt statute of the United States.

Wherefore, the said J. A. E. Pyle, trustee in bankruptcy of Steele, Miller & Company, appellant, prays that for the errors aforesaid and other errors appearing in the record in the above entitled cause to the prejudict [prejudice] of appellant, the said decree be reversed and annulled and that appellant be granted such relief as may be proper, and appellant shall ever so pray.

(Signed) W. A. PERCY,
DUFOUR & DUFOUR,
Solicitors.

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BOND.

Filed March 1st, 1912.

United States District Court, Eastern District of Louisiana.

J. A. E. Pyle, Trustee,
versus No. 14240.
Texas Transport and Terminal Company, et als.

Know all men by these presents, that we, J. A. E. Pyle, trustee in bankruptcy of Steele, Miller & Company, as principal, and Southwestern Surety Insurance Company, of Oklahoma, as sureties, are held and firmly bound unto The Texas Transport & Terminal Company, Compagnie Generale Trans-

atlantique, the Bank de Mulhouse in the full and just sum of two hundred dollars, to be paid to the said Texas Transport & Terminal Company, Compagnie Generale Transatlantique, Bank de Mulhouse, certain attorney, executors, administrators or assigns, to which payment, well and truly to be made, we bind ourselves, our heirs, executors and administrators, jointly and severally, by these presents. Sealed with our seals and dated this 1st day of March, in the year of our Lord one thousand nine hundred and twelve.

Whereas, lately at a session of the United States District Court, holding sessions in and for the Eastern District of Louisiana, in a suit depending in said court, between J. A. E. Pyle, trustee, and the Texas Transport & Terminal Company, et als., number 14240 of the docket of said court, a decree was rendered against the said J. A. E. Pyle, trustee, and the said J. A. E. Pyle, trustee, having obtained an appeal and filed a copy thereof in the clerk's office of the said court to reverse the decree in the aforesaid suit, and a citation directed to the said Texas Transport & Terminal Company, Compagnie Generale Transatlantique, Bank de Mulhouse, citing and admonishing them to be and appear before the United States Circuit Court of Appeals for the Fifth Circuit, to be holden at New Orleans, Louisiana, within 30 days from the date thereof.

Now, the condition of the above obligation is such that if the said J. A. E. Pyle, trustee, shall prosecute said appeal to effect, and answer all damages and costs if he fail to
1331 make his plea good, then the above obligation to be void; else to remain in full force and virtue.

(Signed) J. A. E. PYLE, Trustee,
By WM. C. DUFOUR,
[Seal] His Solicitor & Attorney.
(Signed) SOUTHWESTERN SURETY INS. CO. OF OKLA.,
By J. H. BODENHEIMER,
[Seal] Agent & Atty. in Fact.

Approved by—
(Signed) RUFUS E. FOSTER, Judge.

1332 STIPULATION.

Filed May 30, 1912.

United States District Court, Eastern District of Louisiana.

J. A. E. Pyle, Trustee,
versus
Texas Transport & Terminal Co., et als.

Nos. 14,240, 14,241, 14,242, 14,243 and 14,277.

It is agreed between the counsels herein that the transcript in the within numbered and entitled causes shall be filed in the office of the clerk of the Court of Appeals as soon as same can be completed, it being distinctly understood that said transcript shall be filed not later than thirty days from this date.

New Orleans, La., May 28, 1912.

(Sig.) DENEGRE & BLAIR,
Solicitors for Havre Banks.

1333 PRAECIPE FOR TRANSCRIPT OF APPEAL.

Filed June 28, 1912.

United States District Court, Eastern District of Louisiana.

J. A. E. Pyle, Trustee,
versus
Texas Transport and Terminal Company, et als.

Nos. 14,240, 14,241, 14,242, 14,243 and 14,277.

New Orleans, La., April ——, 1912.

To H. J. Carter, Esq.,
Clerk United States District Court.

Dear Sir:

In making up the transcript of appeal in the case numbered 14,240 of the docket, entitled as above, you will include therein the following, to-wit:

Bill of complaint, exhibits annexed, and order on bill.

Subpoenas in chancery and return thereon.

Restraining order and return thereon.

Appearance of Texas Transport & Terminal Co. and Compagnie Generale Transatlantique.

Appearance of Bank de Mulhouse.

Note of evidence on behalf of Texas Transport & Terminal Co. and Compagnie Generale Transatlantique.

Affidavit of Wm. H. Hendren.

Note of evidence on behalf of Bank of Mulhouse.

Affidavits of Frans Lysell, Elisee Paul Dubois, Emile Level, Alphonse Riss, Albert Schilling, Frans Lyzell, Albert Schilling, Ferdinand Scheuch.

Note of evidence on behalf of complainant.

Affidavits of Elmer E. Clerk, C. H. G. Linde, Edward S. Elliott, Wm. C. Dufour, Andrew J. Lafargue, Andrew J. Lafargue, Wm. C. Dufour, William C. Dufour.

Opinion of the Court.

Decree on application for injunction.

Injunction to Texas Transport & Terminal Co. and Compagnie Generale Transatlantique, and return thereon; bonds.

Motion of Bank of Mulhouse for extension of time, &c.

Motion of complainant to sell cotton, and return thereon.

Demurrer of Bank of Mulhouse to jurisdiction.

Motion of complainant to set down for argument demurrer of Bank of Mulhouse.

Order overruling demurrer.

Proceedings on motion of Bank of Mulhouse to have complainant furnish additional bonds, etc., and bond.

Proceedings on rule of Bank of Mulhouse to release cotton on bond, etc., and bond.

Answer of Bank of Mulhouse.

Replication to answer of Bank of Mulhouse.

Motion and order in re taking of testimony and agreement.

Petition for writ of habeas corpus ad testificandum.

Writ of Habeas corpus ad testificandum and return thereon.

Motion and order to warden in re C. H. G. Linde.

Answer of Texas Transport & Terminal Co. and Compagnie Generale Transatlantique.

Amended answer of Texas Transport & Terminal Co., et al.

Minute entries of hearings, etc.

Complainant's note of evidence.

Stipulation as to taking of evidence in the case.

Stipulation as to claims for damages set up in answers of Texas Transport & Terminal Co., et al.

Stipulation as to testimony of W. E. Kennedy.

1334 Testimony taken on behalf of complainant.

Exhibits offered in connection with testimony on behalf of complainants, and referred to in complainant's note of evidence.

Notes of evidence on behalf of all of the defendants.

Testimony, depositions and documentary evidence offered on behalf of all of the defendants.

Letter from Frank H. Mortimer, clerk, to Compagnie Generale Transatlantique, that all injunctive orders, etc., are released and dissolved.

Opinion of the Court.

Decree.

Motion and order for appeal.

Assignments of error.

Bond for appeal.

In the cases entitled and numbered—

J. A. E. Pyle, Trustee,
versus
Texas Transport & Terminal Co., et als.

Nos. 14241, 14242, 14243 & 14277.

the following are to be copied into the transcripts of appeal in said cases, to-wit:

Bill of complaint, exhibits attached and order thereon.

Subpoenas in chancery and returns thereon.

Restraining order and return thereon.

Appearances of defendants.

Special appearances of defendants.

Minute entries of hearings, etc.

Decree on application for injunction.

Injunction and return thereon.

All motions, and orders to show cause, etc.

Bond of trustee on injunction.

Demurrer.

Hearing and order overruling demurrer.
Answers.
Application to release cotton on bond, hearing and order on same.
Release bond.
Replications to answers.
Notes of evidence on behalf of complainant and the defendants.
Decree.
Appeal papers.
New Orleans, La., April ——, 1912.

(Signed) DUFOUR & DUFOUR,
Solicitors for J. A. E. Pyle, Trustee, Appellant.

1335 STIPULATION.

June 28, 1912.

United States District Court, Eastern District of Louisiana.

J. A. E. Pyle, Trustee,
vs. No. 14,240.
Texas Transport and Terminal Company, et als.

It is hereby stipulated and agreed, by and between the undersigned counsel, that copies or plates shall be made of the following documentary evidence offered and filed in the above entitled and numbered case and in cases numbered 14,241, 14,242, 14,243 and 14,277, entitled as above, for transmission to the Honorable United States Circuit Court of Appeals for the Fifth Circuit, with the transcript of appeal in the case numbered 14,240, to-wit:

The drafts drawn by Steele, Miller & Company on the Bank de Mulhouse, on the Societe Generale, Credit Havrais, and on Paul Chardin, defendants.

It is further stipulated and agreed that the sheets of account in French, marked Exhibit No. 3, "24 feuilles," "Scheuch & Co.," and filed in case No. 14,242, November 20, 1911, shall be transmitted in the original, with a translation thereof, if

found necessary, to the Honorable United States Circuit Court of Appeals for the Fifth Circuit, with the said transcript of appeal.

New Orleans, April 25, 1912.

(Signed) DUFOUR & DUFOUR,
Solicitors for Complainant, Appellant.
(Signed) DENEGRE & BLAIR,
Solicitors for Defendants, Appellees.

1336 AGREEMENT.

Filed June 28, 1912.

U. S. District Court, Eastern Dist. of La.

J. A. E. Pyle, Trustee,
versus
Texas Transport & Terminal Co., et als.

Numbers 14,240, 14,241, 14,242, 14,243 and 14,277.

Agreement.

It is agreed between the undersigned counsel for complainant and defendants that the transcripts of appeal in the within numbered causes shall be filed in the office of the clerk of the Court of Appeals not later than July tenth, one thousand, nine hundred and twelve.

N. O. 6/25/12.

(Signed) DENEGRE & BLAIR,
Solicitors for Havre Banks.
(Signed) DUFOUR & DUFOUR,
Solicitors for Complainant.

United States of America.

District Court of the United States, Eastern District of Louisiana.

Clerk's Office:

I, HENRY J. CARTER, Clerk of the District Court of the United States for the Eastern District of Louisiana, do hereby certify that the foregoing 1336 pages contain and form a full, complete, true and perfect transcript of the record, assignment of errors, and proceedings had, together with all the evidence adduced on the trial of the case of J. A. E. Pyle, Trustee, versus Texas Transport & Terminal Company, et als., No. 14,240 of the docket of the said Court, and also all of the evidence adduced on the trial of the cases, bearing the same title and numbered 14,241, 14,242, 14,243 and 14,277, of the docket of the said Court (made in accordance with the praecipe for the transcripts of appeal in the cases entitled as above and numbered 14,240, 14,241, 14,242, 14,243 and 14,277, copied at page, beginning at 1333 of this transcript), except the copies or plates of the drafts drawn by Steele, Miller & Company on the Bank de Mulhouse, the Societe Generale, Credit Havrais and on Paul Chardin, defendants, which copies or plates of said drafts are transmitted, with this transcript, to the Honorable United States Circuit Court of Appeals for the Fifth Circuit, in accordance with the stipulation of counsel, copied at page 1335 of this transcript; and except the sheets of account in French, marked Exhibit No. 3, "24 feuilles," "Scheuch & Co.," and filed in case No. 14,242, November 20, 1911, which sheets of account are transmitted in the original to the Honorable United States Circuit Court of Appeals for the Fifth Circuit, with the transcript of appeal, in accordance with said stipulation of counsel, copied at page 1335 of this transcript.

Witness my hand and the seal of said Court, at the City of New Orleans, Louisiana, this 10th day of July, A. D. 1912.

[Seal] H. J. CARTER, Clerk.

That thereafter, the following proceedings were had in said cause in the United States Circuit Court of Appeals for the Fifth Circuit, viz:

Argument and Submission.

Extract from the Minutes of March 20, 1913.

No. 2389.

J. A. E. PYLE, Trustee in Bankruptcy of Steele, Miller & Company,
versus
TEXAS TRANSPORT & TERMINAL COMPANY, COMPAGNIE GENERALE TRANSATLANTIQUE, and BANK DE MULHOUSE.

On this day this cause was called, and, after argument by Wm. C. Dufour, Esq., for Appellant, and J. P. Blair, Esq., for Appellees, was submitted to the Court.

Opinion of the Court.

Filed April 8th, 1913.

United States Circuit Court of Appeals, Fifth Circuit.

No. 2389.

J. A. E. PYLE, Trustee, etc.,
v.
TEXAS TRANSPORT & TERMINAL CO. et al. and BANK DE MULHOUSE.

No. 2390.

J. A. E. PYLE, Trustee, etc.,
v.
TEXAS TRANSPORT & TERMINAL CO. et al and COMPTOIR D'ESCOMPTE DE MULHOUSE.

No. 2391.

J. A. E. PYLE, Trustee, etc.,
v.
TEXAS TRANSPORT & TERMINAL CO. et al. and PAUL CHARDIN.

No. 2392.

J. A. E. PYLE, Trustee, etc.,
v.
TEXAS TRANSPORT & TERMINAL CO. et al. and SOCIETÉ GENERALE.

No. 2393.

J. A. E. PYLE, Trustee, etc.,
v.
TEXAS TRANSPORT & TERMINAL CO. et al. and CREDIT HAVRAIS.

Appeals from the District Court of the United States, Eastern District of Louisiana.

Before Pardee and Shelby, Circuit Judges, and Sheppard, District Judge.

By the COURT:

The appeals in the above numbered and entitled cases are affirmed on the authority of Lovell v. Newman & Son, 192 F. 753, and Hentz & Co., v. Lovell, Id. 762.

Judgment.

Extract from the Minutes of April 8, 1913.

No. 2389.

J. A. E. PYLE, Trustee in Bankruptcy of Steele, Miller & Company,
versus
TEXAS TRANSPORT & TERMINAL COMPANY, COMPAGNIE GENERALE TRANSATLANTIQUE, and BANK DE MULHOUSE.

This cause came on to be heard on the transcript of the record from the District Court of the United States for the Eastern District of Louisiana, and was argued by counsel;

On consideration whereof, It is now here ordered, adjudged and decreed by this Court, that the decree of the said District Court, in this cause, be, and the same is hereby affirmed;

It is further ordered, adjudged and decreed that the Appellant, J. A. E. Pyle, Trustee in Bankruptcy of Steele, Miller & Company, and the surety on the appeal bond herein, Southwestern Surety Insurance Company of Oklahoma, be condemned, in solido, to pay the costs of this cause in this Court, for which execution may be issued out of said District Court.

Petition for Rehearing.

Filed May 5th, 1913.

United States Circuit Court of Appeals, Fifth Circuit.

No. 2389.

J. A. E. PYLE, Trustee,
versus
TEXAS TRANSPORT & TERMINAL COMPANY et als.

Application for Rehearing.

The petition of J. A. E. Pyle, trustee, appellant in the above entitled cause, represents:

That there is error to petitioner's prejudice in the decree rendered by this Honorable Court in this cause affirming the decree from which petitioner's appeal was prosecuted and for specification of error, petitioner says:

That the decree is based upon the authority of the cases of Lovell, Trustee, v. Isidore Newman, and Hentz v. Lovell, reported in 193 F., p. 753.

It is respectfully submitted that the issue involved in the present suit is separate and distinct from the issues involved and presented in the case under authority of which the Court has affirmed this decree, in that the cases cited invoked solely the issue of appropriation of property, while in the instant case, the Court had before it a direct charge of giving and receiving an unfair preference within the intendment of the Bankruptcy Statute, which issue was neither presented nor decided in the Lovell or Hentz cases; that, therefore, the authority cited cannot be held to control the present case.

Wherefore, petitioner prays that a rehearing may be granted in this cause, and that upon such hearing, the judgment appealed from be reversed and that judgment be rendered in favor of petitioner, granting the relief prayed for.

(Signed) WM. C. DUFOUR,
(Signed) H. GENERES DUFOUR,
Solicitors for Appellant.

The undersigned hereby certifies that he is one of the solicitors for J. A. E. Pyle, trustee, appellant in the above entitled and numbered cause, and that in his opinion the foregoing petition for rehearing is well founded in law.

(Signed) WM. C. DUFOUR.

Order Denying Rehearing.

Extract from the Minutes of June 2nd, 1913.

No. 2389.

J. A. E. PYLE, Trustee in Bankruptcy of Steele, Miller & Company,
versus
TEXAS TRANSPORT & TERMINAL COMPANY, COMPAGNIE GENERALE TRANSATLANTIQUE, and BANK DE MULHOUSE.

Ordered that the petition for rehearing, filed in this cause, be and the same is hereby denied.

Petition for Appeal, and Order.

Filed July 3d, 1913.

United States Circuit Court of Appeals, Fifth Circuit.

No. 2389.

J. A. E. PYLE, Trustee,
versus
TEXAS TRANSPORT & TERMINAL COMPANY et als.

The petition of J. A. E. Pyle, Trustee of Steele, Miller & Company, Bankrupts, with respect shows:

That the above entitled cause is now pending in the United States Circuit Court of Appeals for the Fifth Circuit and that a decree has been herein rendered on the 8th day of April, 1913, affirming the judgment of the District Court of the United States for the Eastern District of Louisiana; that the matter in controversy in said suit exceeds Three Thousand Dollars ($3000), besides interest and costs, and that the jurisdiction of none of the said Courts is, or was invoked, nor is or was dependant, upon the opposite parties to the suit or controversy being aliens and citizens of the United States or citizens of different states; and that this cause does not arise under the patent laws nor the copyright laws, nor the revenue laws, nor the criminal laws of the United States, and that it is not an admiralty case and that it is a proper cause to be reviewed by the Supreme Court of the United States upon appeal.

Therefore, your petitioner respectfully prays that an appeal with Supersedeas be allowed in the above cause, and that the Clerk of the United States Circuit Court of Appeals for the Fifth Circuit be directed to send the record and proceedings in said cause, with all things concerning same, to the Supreme Court of the United States in order that the errors complained of in the assignment of error herein filed by said appellant may be reviewed and if error be found corrected according to the laws and customs of the United States.

(Signed) WM. C. DUFOUR,
(Signed) H. GENERES DUFOUR,
Solicitors.

Order.

The foregoing petition is granted and the appeal allowed as prayed for upon appellant giving bond according to law in the sum of $250.00.

July 2d, 1913.

(Signed) DON A PARDEE, *Judge.*

Assignment of Errors.

Filed July 3d, 1913.

United States Circuit Court of Appeals, Fifth Circuit.

No. 2389.

J. A. E. PYLE, Trustee,
versus
TEXAS TRANSPORT & TERMINAL COMPANY et als.

And now comes J. A. E. Pyle, Trustee in Bankruptcy of Steele, Miller & Company, Bankrupts, appellant, through William J. Lamb, William C. Dufour and H. Generes Dufour, his solicitors and says that in the record and proceedings aforesaid in the United States

Circuit Court of Appeals for the Fifth Circuit in the above entitled cause and in the rendition of the final decree therein manifest, error has intervened to the prejudice of said appellant in this, to-wit:

(1) The United States Circuit Court of Appeals for the Fifth Circuit erred in affirming the decree of the United States District Court for the Eastern District of Louisiana.

(2) The said United States Circuit Court of Appeals for the Fifth Circuit erred in not reversing the said decree of the United States District Court for the Eastern District of Louisiana.

(3) The said United States — Court of Appeals for the Fifth Circuit erred in failing to sustain appellant's Assignment of Error No. 4 upon the record of said case, as follows:

"That the Court erred in holding by delivering the actual cotton to the carriers, Steele, Miller & Company intended to appropriate and did appropriate said cotton to the fraudulent bills of lading acquired and held by defendant.

(4) The said United States Circuit Court of Appeals for the Fifth Circuit erred in failing to sustain appellant's Assignment of Error No. 5 upon the record of said case as follows:

"The Court erred in holding that the defendant bank was in fact a purchaser of actual cotton from Steele, Miller & Company."

(5) The said United States Circuit Court of Appeals for the Fifth Circuit erred in failing to sustain appellant's Assignment of Error No. 6 upon the record of said case, as follows:

"The Court erred in failing to find and hold that the defendant knew or ought to have known or had reasonable grounds to believe that Steele, Miller & Company were insolvent at the time the defendand received the genuine bills of lading representing cotton actually shipped referred to in the bill of complaint.

(6) The said United States Circuit Court of Appeals for the Fifth Circuit erred in failing to sustain appellant's Assignment of Error No. 7, upon the record of said case as follows:

"The Court erred in failing to find and to hold that Steele, Miller & Company, by delivering the genuine bills of lading to the defendant representing cotton actually shipped, thereby intended to prefer and did prefer said defendant to and over its other creditors, and thereby intended to grant and did grant an illegal and unfair preference to the defendant, and that the defendant did receive a preference within the meaning and intendment of the bankrupt statute of the United States."

Wherefore, said J. A. E. Pyle, Trustee, as aforesaid, prays that for the errors aforesaid and other errors appearing in the record of said United States Circuit Court of Appeals for the Fifth Circuit in the above entitled cause to the prejudice of the appellant, said decree of the United States Circuit Court of Appeals for the Fifth Circuit be reversed and annulled and that said cause be remanded to the United States District Court for the Eastern District of Louisiana, with instructions to set aside the decree heretofore rendered in the trial of this cause and commanding a new trial for same and such other proceedings in said cause as may be determined upon by

this Honorable Court to the end that justice may be obtained in the premises.

(Signed) H. GENERES DUFOUR,
(Signed) WM. C. DUFOUR,
Solicitors.

Bond on Appeal.

Filed July 7th, 1913.

J. A. E. PYLE, Trustee in Bankruptcy of Steele, Miller & Company,
vs.
TEXAS TRANSPORT AND TERMINAL COMPANY, COMPAGNIE GENERALE TRANSATLANTIQUE, and BANK DE MULHOUSE.

Know all men by these presents, that we J. A. E. Pyle, Trustee in Bankruptcy of Steele, Miller & Company, as Principal, and Southwestern Surety Insurance Company as Surety, are held and firmly bound unto The Texas Transport and Terminal Company, Compagnie Generale Transatlantique and Bank de Mulhouse in the sum of Two Hundred and Fifty Dollars ($250.00), to be paid to the said, The Texas Transport and Terminal Company, Compagnie Generale Transatlantique and Bank de Mulhouse; we bind ourselves and each of our heirs, executors, and administrators, jointly and severally, firmly by these presents.

Sealed with our seals and dated the 3rd day of July, A. D. 1913.

Whereas, the Appellant in the above entitled suit has prosecuted an appeal to the Supreme Court of the United States to reverse the decree rendered and entered in said cause in the Circuit Court of Appeals for the Fifth Circuit on the 8th day of April, 1913.

Now, therefore, the condition of this obligation is such that if the said appellant shall prosecute said appeal to effect and answer all damages and costs if he fails to make said appeal good, then this obligation shall be void; otherwise to remain in full force and virtue.

(Signed) J. A. E. PYLE, *Trustee,*
By WM. C. DUFOUR, *Solicitor.*
(Signed) SOUTHWESTERN SURETY INSURANCE CO. OF OKLAHOMA, [SEAL.]
By J. H. BODENHEIMER,
Agent and Attorney-in-Fact.

The foregoing bond is approved this 4th day of July, A. D. 1913.

(Signed) DON A. PARDEE,
United States Circuit Judge, Fifth Circuit.

Order to Transmit Certain Exhibits in the Original.

Filed July 7th, 1913.

United States Circuit Court of Appeals, Fifth Circuit.

No. 2389.

J. A. E. PYLE, Trustee in Bankruptcy of Steele, Miller & Company, Appellant,
versus
TEXAS TRANSPORT & TERMINAL COMPANY, COMPAGNIE GENERALE TRANSATLANTIQUE, and BANK DE MULHOUSE, Appellees.

On motion of Dufour & Dufour, Attorneys for appellant—
It is ordered by the Court that the original exhibits transmitted to this Court with the transcript of record and filed therewith be forwarded to the Supreme Court of the United States in the original.
(Signed) DON A. PARDEE, *Judge.*

Clerk's Certificate.

UNITED STATES OF AMERICA:

United States Circuit Court of Appeals, Fifth Circuit.

I, Frank H. Mortimer, Clerk of the United States Circuit Court of Appeals for the Fifth Circuit, do hereby certify that the pages numbered from 853 to 870 next preceding this certificate contain full, true and complete copies of all the pleadings, record entries and proceedings, including the opinion of the United States Circuit Court of Appeals for the Fifth Circuit, in a certain cause in said Court, numbered 2389, wherein J. A. E. Pyle, Trustee in Bankruptcy of Steele, Miller & Company, is appellant, and The Texas Transport & Terminal Company, Compagnie Generale Transatlantique, and Bank de Mulhouse are appellees, as full, true and complete as the originals of the same now remain in my office.

I further certify that the pages of the printed record numbered from 1 to 852 are identical with the printed record upon which said cause was heard and decided in the said Circuit Court of Appeals.

I further certify that the exhibits, forwarded to this Court in the original, are ordered to be transmitted to the Supreme Court of the United States, as per motion and order copied at page 869 of this record.

In testimony whereof, I hereunto subscribe my name and affix the seal of the said Circuit Court of Appeals, at my office in the City of New Orleans, Louisiana, in the Fifth Circuit, this 11th day of July, A. D. 1913.

[Seal United States Circuit Court of Appeals, Fifth Circuit.]

FRANK H. MORTIMER,
Clerk of the United States Circuit Court of Appeals.

THE UNITED STATES OF AMERICA:

The President of the United States to The Texas Transport and Terminal Company, Compagnie Generale Transatlantique, and Bank de Mulhouse, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States at Washington, D. C., within thirty (30) days from the date hereof, pursuant to a petition and order of appeal sued out and filed in the Clerk's Office of the United States Circuit Court of Appeals for the Fifth Circuit, in the cause wherein J. A. E. Pyle, Trustee in Bankruptcy of Steele, Miller & Company, is Appellant and Texas Transport and Terminal Company, Compagnie Generale Transatlantique and Bank de Mulhouse are Appellees to show cause, if any there be, why the decree rendered against the said J. A. E. Pyle, Trustee in Bankruptcy of Steele, Miller & Company and in said petition and order of appeal mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness, the Honorable Edward Douglass White, Chief Justice of the United States, this 4th day of July in the year of our Lord one thousand nine hundred and thirteen.

New Orleans, July 9th, 1913.

DON A. PARDEE,
United States Circuit Judge.

Service accepted.

DENEGRE & BLAIR,
Sol'rs for Bank de Mulhouse.
GEO. H. TERRIBERRY,
Solicitor for Texas Tr. & Term. Co. & Compagnie Generale Transatlantique.

[Endorsed:] No. 2389. United States Circuit Court of Appeals, Fifth Circuit. J. A. E. Pyle, Trustee in Bankruptcy of Steele, Miller & Co., Appellant, vs. Texas Transport & Terminal Co., Compagnie Generale Transatlantique, and Bank de Mulhouse, Appellees. Citation. U. S. Circuit Court of Appeals. Filed Jul- 10, 1913. Frank H. Mortimer, Clerk.

Endorsed on cover: File No. 23,807. U. S. Circuit Court Appeals, 5th Circuit. Term No. 226. J. A. E. Pyle, trustee in bankruptcy of Steele, Miller & Company, appellant, vs. The Texas Transport and Terminal Company, Compagnie Generale Transatlantique, and Bank de Mulhouse. Filed August 1st, 1913. File No. 23,807.

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Supreme Court of the United States

OCTOBER TERM, 1914.

J. A. E. PYLE, Trustee in Bankruptcy of Steele, Miller & Company, Appellant, *vs.* THE TEXAS TRANSPORT & TERMINAL COMPANY, COMPAGNIE GENERALE TRANSATLANTIQUE, and BANK DE MULHOUSE.	No. 226.
J. A. E. PYLE, Trustee in Bankruptcy of Steele, Miller & Company, Appellant, *vs.* THE TEXAS TRANSPORT & TERMINAL COMPANY, COMPAGNIE GENERALE TRANSATLANTIQUE, and COMPTOIR D'ESCOMPTE DE MULHOUSE.	No. 227.
J. A. E. PYLE, Trustee in Bankruptcy of Steele, Miller & Company, Appellant, *vs.* THE TEXAS TRANSPORT & TERMINAL COMPANY, COMPAGNIE GENERALE TRANSATLANTIQUE, and PAUL CHARDIN.	No. 228.

J. A. E. PYLE, Trustee in Bankruptcy of Steele, Miller & Company, Appellant, *vs.* THE TEXAS TRANSPORT & TERMINAL COMPANY, COMPAGNIE GENERALE TRANSATLANTIQUE, and SOCIETE GENERALE.	No. 229.
J. A. E. PYLE, Trustee in Bankruptcy of Steele, Miller & Company, Appellant, *vs.* THE TEXAS TRANSPORT & TERMINAL COMPANY, COMPAGNIE GENERALE TRANSATLANTIQUE, and CREDIT HAVRAIS.	No. 230.

APPEALS FROM THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIFTH CIRCUIT.

BRIEF FOR APPELLANT.

STATEMENT OF THE CASE.

Steele, Miller & Company were cotton merchants in Corinth, Mississippi. Their business was to export cotton to foreign ports. Their entire business, in so far as the record in this case shows, was done upon through bills of lading, the bills covering the entire contract of

carriage from delivery at the initial point up too delivery at the point designated.

Scheuch & Company was a firm of Europeean cotton merchants domiciled at Havre.

Four of the defendants, to-wit, the Societe Generale, the Bank de Mulhouse, the Credit Havrais and tthe Comptoir d'Escompte de Mulhouse were and are bamks domiciled in France, each with a branch in the City of Havre.

Paul Chardin was and is a banker and cottton merchant with a banking house in Paris and a bbranch of his cotton business in Havre, France.

Previous to September 1, 1909, Steele, Millerr & Company had sold or consigned large amounts of cotton to and through Scheuch & Company, and had beeen reimbursed for said cotton in the usual and ordinaryy method, to-wit, the drawing of drafts with all documents attached, which said drafts were accepted by tthe bank designated by Scheuch & Company.

On the 1st of September, 1909, although tthe cotton season of 1908-1909 was at an end, Steele, Millerr & Company owed to the port of Havre some twenty thousand bales of cotton.

Beginning September 1, 1909, Steele, Miller & Company renewed its engagements with Scheuch & Company, who, in turn, arranged credits with certaain banks and bankers, and particularly the defendantts in this case.

The record shows that Steele, Miller & Comnpany arranged to consign large lots of cotton to Scheuch & Company to be held in Havre for sale, and thatt Scheuch & Company made arrangements with the ddefendant

banks and bankers whereby money could be procured on these consignments of cotton in the usual and customary way, to-wit, on drafts secured by all documents, or what is known in the French business world as "engagements d'importation."

In the present case, beginning on or about the 7th day of December, 1909, and continuing through to the 24th day of January, 1910, Steele, Miller & Company forged through bills of lading, and having dated them, drew drafts on the French banks and bankers, who are defendants in this case, and with whom Scheuch & Company had opened bankers' credit. To these drafts Steele, Miller & Company attached the forged through bills of lading. These forged bills of lading were made to resemble genuine bills of lading in every respect. They stated the marks and weight and number of bales of the cotton which they were supposed to represent, and all bore the date of the initial point from which the cotton was presumed to start.

These drafts to which the forged bills of lading were attached were sent to France and accepted by the banks in pursuance to their contract with Scheuch & Company. On being accepted by the banks, and in accordance with the custom of the trade, the documents attached to the drafts, to-wit, the bills of lading, passed into the possession of the banks, which held **them as security for the credit extended Scheuch & Company** by virtue of having loaned their names to the acceptance of the drafts. When these drafts became due, they were paid by the defendant banks. At the time that the banks accepted these drafts, they believed that the bills of lading attached to the drafts were genuine, and that

the cotton described in these bills of lading had been delivered to the railroad company, and that the railroad company had issued its bills of lading therefor. In other words, they accepted the drafts because of their "engagement d'importation" with Scheuch & Company, believing that the bills of lading represented a transaction actually done and completed between Steele, Miller & Company and the railroad company, and that the bills of lading represented security for the actual cotton. To these drafts were attached insurance certificates showing that the cotton represented by the bills of lading had been insured. The banks believed that the cotton had been delivered to and was in the custody of the railroad companies, and that the bills of lading showed that this was a fact, and they further believed that actual cotton in transit had been insured and that the insurance certificates represented this actual fact. They had not the remotest idea at the time that the cotton had not been bought by Steele, Miller & Company, or that same was to be bought at some future date by Steele, Miller & Company and put in the possession of the railroad companies. They had agreed with Scheuch & Company to extend the "engagement d'importation" according to the usual and customary business method in the business world, and they relied upon the statements of the bills of lading that cotton had been delivered to the carriers and they did not expect that it was to be delivered in the future. Quo ad Steele, Miller & Company, the banks had no relations beyond the fact that they accepted the drafts in accordance with their engagements with Scheuch & Company.

Several months after Steele, Miller & Company had thus obtained money on forged bills of lading, they acquired cotton at Philadelphia, Mississippi, and Memphis, Tennessee. This cotton bore the same marks as appeared on the forged bills of lading. They then shipped cotton to Havre, France, via New Orleans, and took out way bills, or, properly speaking, local bills, therefor to their own order. They then sent the cotton by rail to New Orleans and there they surrendered the way bills of lading and exchanged them for port bills of lading. Having done this, they sent the port bills of lading to Scheuch & Company with instructions that they should take these port bills of lading to the several banks and exchange them for the through bills of lading which the banks already held for the cotton having the same marks. Of course, Steele, Miller & Company were aware that they were giving a genuine bill of lading, calling for cotton which they had delivered into the custody of the carrier, in exchange for bills of lading which were absolute forgeries and called for nothing.

Scheuch & Company obeyed the instructions of Steele, Miller & Company, and when they received the genuine bills of lading, took them at once to the bank and delivered them to said banks. In previous cases, the banks surrendered the forged bills in exchange, but on this occasion the banks not only received and kept the genuine bills of lading, but also retained the forged bills of lading which they already had. These genuine bills of lading were delivered to the French banks on various dates from April 26, 1910, to May 7, 1910.

On April 26, 1910, an application was made in the United States Circuit Court for the Northern District of Mississippi to put Steele, Miller & Company into the hands of a receiver, on the ground that the firm was insolvent and was dissipating its assets. An injunction issued.

On May 4, 1910, suit was brought by Knoop, Fabrius & Company in the United States District Court for the Northern District of Mississippi to force Steele, Miller & Company into bankruptcy, and at the time the suit was filed, J. A. E. Pyle was appointed temporary receiver.

On May 31, 1910, Steele, Miller & Company and the individual members thereof were adjudicated bankrupts in the above suit and said Pyle was duly elected trustee and qualified as such.

On August 18, 1910, this bill was filed by the trustee to enjoin the shipment and removal of the cotton called for by the genuine bill of lading from New Orleans to Havre. In substance, the bill avers that the banks became and were mere ordinary, unsecured creditors of Steele, Miller & Company by reason of their payment of the drafts to which the forged bills of lading were attached as security, and that the substitution of the genuine bills of lading in the place of the forged bills of lading at the time and under the conditions was and is an illegal preference over the other ordinary creditors of Steele, Miller & Company.

A restraining order issued, and upon a trial of the rule the Circuit Court granted a preliminary injunction. Subsequently a demurrer was filed by the defendants and

overruled. Thereupon the defendants filed answers, in which they set up the following defenses:

(1) Appropriation.

(2) Estoppel against the trustee.

(3) No preference within the meaning and intendment of the bankruptcy statute.

The lower Court rendered a decree in favor of the defendants, from which the complainant prosecuted an appeal to the Circuit Court of Appeals for the Fifth Circuit. On appeal the decree was affirmed. (See Fed. Rep. 203, p. 1023.) And from the decision of the Circuit Court of Appeals the complainant prosecutes this appeal.

ASSIGNMENTS OF ERROR.

(Tr., p. 856.)

"(1) The United States Circuit Court of Appeals for the Fifth Circuit erred in affirming the decree of the United States District Court for the Eastern District of Louisiana.

"(2) The said United States Circuit Court of Appeals for the Fifth Circuit erred in not reversing the said decree of the United States District Court for the Eastern District of Louisiana.

"(3) The said United States Court of Appeals for the Fifth Circuit erred in failing to sustain appellant's assignment of error No. 4 upon the record of said case, as follows:

" 'That the Court erred in holding by delivering the actual cotton to the carriers, Steele, Miller &

Company intended to appropriate and did appropriate said cotton to the fraudulent bills of lading acquired and held by defendant.'

"(4) The said United States Circuit Court of Appeals for the Fifth Circuit erred in failing to sustain appellant's Assignment of Error No. 5 upon the record of the said case, as follows:

" 'The Court erred in holding that the defendant bank was in fact a purchaser of actual cotton from Steele, Miller & Company.'

"(5) The said United States Circuit Court of Appeals for the Fifth Circuit erred in failing to sustain appellant's Assignment of Error No. 6 upon the record of said case as follows:

" 'The Court erred in failing to find and hold that the defendant knew or ought to have known or had reasonable grounds to believe that Steele, Miller & Company were insolvent at the time the defendant received the genuine bills of lading representing cotton actually shipped referred to in the bill of complaint.'

"(6) The said United States Circuit Court of Appeals for the Fifth Circuit erred in failing to sustain appellant's Assignment of Error No. 7 upon the record of said case as follows:

" 'The Court erred in failing to find and to hold that Steele, Miller & Company, by delivering the genuine bills of lading to the defendant representing cotton actually shipped, thereby intended to prefer and did prefer said defendant to and over its other creditors, and thereby intended to grant and did grant an illegal and unfair preference to the defendant, and that the defendant did receive a preference within the meaning and intendment of the bankrupt statute of the United States.' "

ARGUMENT.

We will argue the above assignments of error under the respective heads of "Appropriation" and "The Doctrine of Unfair Preference," and in connection with the argument on "Appropriation" we will present the argument against the estoppel which the defedants pleaded.

At the very outset let us state the actual position of the trustee. The trustee's contentions are:

1. That there was no sale of cotton.

2. That the transaction was a swindle perpetrated by Steele, Miller & Company on the French banks through Steele, Miller & Company's connection with Scheuen & Company; that Steele, Miller & Company did nothing but obtain the banks' money on false pretenses by securing acceptance, and thereby credit through representation that they had shipped cotton actually delivered at that time, into the custody of the carrier; that the sole reason why the banks accepted the drafts was that they believed the representations implied from the terms of the bill of lading; and that neither Steele, Miller & Company nor the bank had in their minds any idea that the circumstances required, or even admitted, the assumption of an alternative on their part to make good the statements of the bills of lading, if they were not true in point of fact at the time the banks bought them. The trustee, therefore, denies that there was any executory contract existing between Steele, Miller & Company under which Steele, Miller & Company were expected or

authorized to buy cotton for the banks, and, consequently, denies that anything was done by Steele, Miller & Company, in the absence of such an agreement and meeting of minds between them and the banks, can be considered as an "appropriation," whereby the banks could become the owners of the cotton subsequently acquired by Steele, Miller & Company.

3. That when Steele, Miller & Company sent forward for delivery to the banks the genuine bills of lading for cotton actually shipped, they did not "appropriate" this cotton to any executory contract; that, even if there had been a direct contract with the banks, the manner of delivery to the carriers was such as to preclude any suggestion of parting with title at the time of delivery.

4. That the transaction was solely and simply a substitution of genuine and valid bills of lading in place of forged, void and worthless bills of lading.

5. That at the time of the substitution of genuine and valid bills of lading in place of forged and worthless bills of lading, the banks had direct knowledge of the insolvency of Steele, Miller & Company.

6. That at the time of the substitution of the said genuine and valid bills of lading in place of the forged, void and worthless bills of lading, with direct knowledge of the insolvency of Steele, Miller & Company, the defendants knew, or should have known, that a preference was intended, and that, therefore, the same can be avoided as preference under the Bankruptcy Act.

I.

APPROPRIATION.

The discussion of the question of "appropriation" sends us at once to the record to establish the nature of the dealings between Steele, Miller & Company and the defendant banks.

These Facts Are Not Disputed.

1. Linde testifies that, except in the case of Chardin, his dealings were consignments shipped to Scheuch & Company, and that Scheuch & Company arranged for the credit by means of the transactions heretofore discussed.

2. Each and every one of the witnesses for the defendant banks swears that he had no relations direct, or indirect, with Steele, Miller & Company, other than that he extended to Scheuch & Company the "engagement d'importation," by which drafts were accepted against documents which each defendant thought were valid and which each **thought represented cotton actually in the hands of the carrier at the time of the acceptance.**

3. That the bill of lading attached to the drafts were through bills of lading representing that cotton had been delivered at certain initial points for direct shipment.

4. That the cotton involved in this suit was delivered to the carrier upon what is known as "inland bills of lad-

ing" to the order of Steele, Miller & Company, notify Hardin & Company, New Orleans.

5. That these bills of lading were delivered to Steele, Miller & Company, who, in turn forwarded them to J. D. Hardin & Company, forwarding agents.

6. That J. D. Hardin & Company in turn delivered the cotton to the French line and in return therefor received port bills of lading.

7. That these port bills of lading were in turn delivered through the mail to Steele, Miller & Company at Corinth.

8. That Steele, Miller & Company forwarded these bills of lading to Scheuch & Company in Havre by mail.

9. That this kind of transaction had taken place several times before and the port bills of lading had always been forwarded and were at this time forwarded to Scheuch & Company with instructions to substitute them for the fraudulent bills of lading in possession of the banks.

10. That on the previous occasion, the French banks had surrendered the through bills of lading on receipt of these custody bills of lading.

11. That, owing to the conditions in the cotton market at the time that the particular substitutions under discussion were made, the defendant banks, as a matter of precaution, retained both sets of documents.

Necessarily these admitted facts raise two questions:

First. Does the case admit of the application of any theory of "**appropriation?**"

Second. Even if the doctrine of "**appropriation**" is applicable to the relations of the parties shown by the findings, do the facts and acts of the parties show an "**appropriation**" or a **substitution and exchange?**

Discussing these questions in the order stated:

1. Does the case admit of the application of any theory of "**appropriation?**"

First. What is an "appropriation?" Generally it is "the act of setting apart or assigning to a particular use or person; the application to a special use or purpose."

Cyc., Vol. II, p. 565.

In relation to contracts, an "**appropriation**" is the **indication** of the object or property which the parties intend to subject to the operation of that contract, and **the placing of that object** or property in such a situation that it becomes subject to the legal operation of the contract.

This necessarily implies that the contract as made is executory by one of the parties.

When the contract is an executed one, the "**appropriation**" takes place contemporaneously with the contract; the parties indicating at that time the property affected by the contract, and placing it in a position to become subject to the operation of the contract.

It is only in executory contracts that questions of "appropriation" present any difficulty, or give rise to any question, for in these contracts **the thing** to be effected by the contract is not **determined** at the time the contract is entered into; nor placed in a situation to be governed by the contract.

This is done by a later act of one or both parties. When the agreement leaves this matter of "**appropriation**" to the subsequent action of one of the parties to the contract, the questions which will determine the validity of the "**appropriation**" are:

(1) What **authority** was given, either express or implied, by the creditor to the debtor to make an "**appropriation?**"

(2) By what acts has the debtor **manifested an intention** to appropriate.

(3) By what **acts** has he **placed the property** in a position where the contract can operate upon it and govern its legal status?

The French banks, it will be remembered, insist that **there was an executory contract outstanding between them and Steele, Miller & Company,** providing for the sale of the cotton to the French banks. This is the very **foundation** of their claim. If no such contracts were outstanding,—if there were no engagement on the part of Steele, Miller & Company to buy cotton and ship it to the French banks, then the position of these banks becomes untenable and they have no claim to the cotton.

It is perfectly obvious that there was no **express** agreement between Steele, Miller & Company and the banks requiring Steele, Miller & Company to purchase cotton and send it to the banks. On the contrary, the contract **quo ad** the banks was with Scheuch & Company. Then, do the facts shown give rise to an **implied** agreement to the same effect? What were the facts? Drafts upon the French banks were presented for accept-

ance in due course of business, with bills of lading attached. By accepting the drafts the banks came into possession of the drafts, not as owners, but as holders under what the law terms a "**security title.**" The dominion was not complete and no element of final control could be exercised until the maturity of the drafts.

Now, let us assume that the position taken by the banks themselves is the correct one, and that their purpose in accepting the drafts was to **acquire control of the cotton** covered by the bills of lading and that in fact they did have control. They would not have paid one centime of the drafts if they had not believed that the representations of the bills of lading were literally true, and that the control of the cotton was then absolutely and indefeasibly secured to them by the bills of lading, just as the terms of the bills of lading indicated had been done. If, at the time the drafts were presented, Steele, Miller & Company had said to the banks:

> "**The cotton mentioned on those bills of lading is not yet bought by us, nor has it been delivered to the carriers, but if you will pay our drafts, we will buy cotton later and appropriate it to those bills of lading,**"

the banks would certainly have refused to pay the drafts. They would have said:

> "If we desire to advance you money with which to purchase cotton hereafter, we will do that in a direct contract, and will have your engagement to apply to the purchase of cotton the money that we advance you for the purchase of cotton, and we will stipulate when and where the cotton purchased with our money is to be deemed to have

become our property. In so important a matter, involving such a large sum of money, we will not leave anything to inference."

The banks would unquestionably have taken this position if Steele, Miller & Company had applied to borrow money with which to purchase cotton.

On the assumption that the transaction quo ad the banks gave the banks all of the rights of a direct purchaser, the banks parted with their money because they believed that the documents exhibited to them were genuine documents and actually conveyed the cotton which they desired to acquire. In this they were deceived:

Steele, Miller & Company palmed off on them worthless documents which did not in reality call for a single pound of cotton, and those were the documents they bought, and under which they got nothing but an empty dream.

By what possible construction can this swindle perpetrated upon the French banks be construed or tortured into an agreement, on the part of Steele, Miller & Company, that they would thereafter purchase cotton for the banks, equal in amount to the cotton represented on the forged bills of lading? Nothing was further from their thoughts, and nothing was further from the thoughts of the banks than that such an agreement was made or was necessary to be made.

For example: A sells a gold brick. The purchaser buys that brick, believing it to be good. In fact, as he finds out later to his grief, the brick is only gilt. There is not a grain of gold in it. Can the seller be permitted to escape the criminal law by asserting that, when he sold the brick, his real engagement was that, if it was not gold, he would thereafter substitute a gold brick for it; that, really and truly, there was an outstanding executory contract between him and the purchaser under which the latter is entitled to get a genuine brick whenever it can be found and delivered to him by the seller. Such a construction would make it impossible to prosecute swindlers who obtained money under false pretenses. In every case, they would claim that, while their express contract was one of present sale, their implied contract was an executory contract to purchase a thing of equal value to that which they represented they sold.

The purchaser might, and probably would in any case, prefer to send the swindler to jail, and he would indignantly deny that there was any such implied contract. He would ridicule the idea that he had furnished the seller money with which to buy a real gold brick in the future. He would insist that the contract he made was a contract of executed sale operating upon a specific and determined thing, and that the swindle consisted in making him believe that the thing possessed a value which it did not in fact possess, as the seller well knew.

So it is in the present case. Steele, Miller & Company knew that the bills they presented to the banks

were forgeries, and represented nothing of any value. They knew that the banks accepted these bills under the belief that the bills were an evidence of title to property **actually owned** by Steele, Miller & Company and **already placed by them in the custody of the carrier** for transmission to Europe. The banks looked for **no further action** from Steele, Miller & Company. They would have been very much astonished if they had been told by Steele, Miller & Company that the cotton was **yet to be bought** in America and put in the custody of the carrier.

Can an executory contract exist when **neither party** to the contract supposes that any such executory contract is outstanding; or that there is any occasion for an executory contract, when one party represents and the other believes that the contract is an **executed and performed** one? We think that the answer to this question is implied by the question itself.

The banks were in the same position as anyone else, who might buy a thing or lend on a thing which was fraudulently represented to exist, but which did not in fact exist. They have been swindled. The party who swindled them is under a legal obligation to make good the loss that they have sustained through his fraud, but there is no implied agreement on the part of the swindler to take the money which he had obtained by his fraud and with it to purchase a thing of equal value to that which he fraudulently represented to exist. Nor can it be conceived that the person, deluded into buying a non-existent thing, can be considered as giving an **implied authority conferred** to the swindler to buy that thing in the future and appropriate it to the exigencies

of the contract. Common sense tells us that there is no such understanding and no such undertaking by the swindler, and no such authority conferred upon the swindler by the buyer. It is difficult to argue this case, because it is difficult to make it any clearer than the bare statements of fact make it. Once we realize that the banks were simply swindled, that they thought they were buying a thing of value, when in fact they were buying nothing, we will have no difficulty in concluding that Steele, Miller & Company had no right to go out in the market two months later and then buy cotton, and take bills of lading for it, to substitute for the forged bills of lading.

The first contract operates as a forged and worthless bill of lading. The second transaction involved the withdrawal of that forged bill of lading from the operation of the contract and the substitution of a genuine bill of lading in its place with the expectation that the contract would from the moment of substitution, operate on the genuine bill of lading.

We insist, therefore, that in this case no conceivable theory of appropriation can operate, for any theory of appropriation demands as a prerequisite the assumption of an executory contract whereby the vendor undertakes to procure and furnish a certain thing, or a thing of a certain sort, at some date subsequent to the making of the contract, and we think we have shown that, in this case at the time the drafts were paid, there was not the slightest intention on either side of entering into an executory contract. The obligation which the law throws upon a swindler, who obtains money under false pre-

tenses, to make good the loss sustained by the party whom he has swindled, must not be confounded with an executory contract. The executory contract would be the agreement to do the specific thing required to be done by the contract. The obligation to make good the loss does not involve an agreement at all. The law steps in and imposes the obligation, irrespective of the wish or intention of the swindler, and this obligation is not to perform the contract specifically, but to pay the money demanded for loss which the other side has sustained, in consequence of the failure of specific performance.

To impute any implied agreement in this case would be contrary to comon sense and common experience.

(2) But, assuming further, for the sake of argument, that any theory of appropriation is applicable to the relations of the parties as shown by the evidence and the averments of the bill, do the facts and the acts of Steele, Miller & Company show an appropriation actually made, or do they show a substitution of exchange?

The forgeries preceded the purchase of the cotton by Steele, Miller & Company by an interval of from sixty to ninety days; that is, Steele, Miller & Company had obtained acceptance of their drafts, with the forged bills of lading attached thereto, sixty to ninety days before they bought the cotton. The mere purchase of cotton was not an appropriation of that cotton to the French banks, even if an executory contract was outstanding under which an appropriation could be legally made. Neither was the cotton appropriated to the exigencies of the forged bills when it was concentrated at Philadelphia, Mississippi, and Memphis, Tennessee.

When Steele, Miller & Company directed the cotton to be marked with the same marks, which they had made use of on the forged bills of lading, that act did not appropriate the cotton to the forged bills, for Steele, Miller & Company could have exported the cotton to any port in the world with those marks, and the French banks could not have set up a legal claim to it. Neither did Steele, Miller & Company appropriate the cotton to the forged bills of lading when they took out **local bills of lading to their own order**, for all the authorities assert that when the seller, or agent of the purchaser, takes out a bill of lading in his own name, he thereby excludes the transfer of the property covered by that bill of lading to the purchaser. When Steele, Miller & Company came to New Orleans and there took out port bills of lading for the cotton, said bills of lading being **still in their own name**, they did not by that act appropriate the cotton to the forged bills of lading. On the contrary, **they re- asserted their own ownership of the cotton, involving the right to do with it as they saw fit, and after taking out the genuine bills of lading in their own names, Steele, Miller & Company could have sold or indorsed these bills of lading to any cotton merchants in the world.**

What did they do? They wrote letters to Scheuch & Company, enclosing the genuine bills of lading. In these letters, they directed Scheuch & Company to take the genuine bills of lading to the banks and deliver them to the banks, and when they delivered them to get back the forged bills of lading. Scheuch & Company were certainly **pro hac vice** the agents of Steele, Miller & Com-

pany. The latter might have cabled to Scheuch & Company to hold the genuine bills of lading when they arrived and not to deliver them to the banks. It would have been the duty of Scheuch & Company to obey, and we must presume that they would have obeyed these instructions, and then the banks could not have claimed any appropriation of the cotton to the exigencies of the forged bills of lading. Up to the moment then that Scheuch & Company actually delivered the genuine bills of lading, there was not the shadow of an appropriation under which the French banks could claim the genuine bills of lading.

When Scheuch & Company received the letters of Steele, Miller & Company, enclosing the genuine bills of lading, and when they went around to the several banks and handed them the genuine bills of lading, then at the moment of delivery, for the first time, did these banks acquire any claim whatever to the genuine bills of lading, and to the cotton represented thereby, and they acquired that title by reason of the **substitution of the genuine bills of lading** for the **forged** bills of lading.

This substitution was made **at a time** and **in a manner** which indisputably caused it to operate as **an illegal preference** in favor of the French banks over all other creditors.

That there had been no **appropriation**, when the cotton was **bought**, or when it was **marked**, or when it was **shipped** under bills of lading to **Steele, Miller & Company's own order**, or when Steele, Miller & Company **sent these bills to Scheuch & Company**, with instructions what to do with them, results clearly from the **authorities**.

In the case of **St. Joze Indiano, 1st Wheaton, 208,** and quoted at 212, this Court said:

> "But the question still recurs: When is the contract executed? It is certainly competent for an agent abroad who purchases in pursuance of orders to vest the property in his principal immediately on the purchase. This is the case when he purchases exclusively on the credit of his principal, or makes an absolute appropriation and designation of the property for his principal. But where a merchant abroad, in pursuance of orders, either sells his own goods, or purchase goods on his own credit (and thereby in reality becomes the owner), no property in the goods vests in his correspondent, until he has done some **notorious act** (black-letter ours) to divest himself of his title, or has parted with the possession by an actual and unconditional delivery for the use of such correspondent. Until that time he has in contemplation of law the exclusive property, as well as possession, and it is not a wrongful act for him to convert them to any use he pleases. He is at liberty to contract upon any new engagements or make any new conditions in relation to the shipment. • • • It is material, also in this view, that all the papers respecting the shipment were addressed to their own house, or to a house acting as their agents, and the **claimants could have no knowledge or control of the shipment, unless by the consent of the consignees, under future arrangements to be dictated by them.**" (Black letters ours.)

It would seem that this case, in so far as testing the question of title, is absolutely on all-fours with the instant case.

ion, the ownership independently of any particular relation with another person. The **jus ad rem** has for its foundation an obligation incurred by another." (Black-letter ours.)

Again, at page 665, the Court says:

"Generally speaking, in the purchase and shipment of goods, on bills of lading attached to bills of exchange drawn against them, the bill of exchange is drawn on the consignee and purchaser, and sent forward for collection through the banker at the place of shipment, who advances on the draft, and thereafter realizes on it through his correspondents, or by sale as exchange; or the banker at some other point, or at the general exchange center, may be drawee of the bill of exchange instead of the consignee or real owner, the banker standing in the place of his customer, or on the faith of a **running account**, the pledge of other securities, or the customer's personal liability, so that the draft may be charged up at once, and at all events, **the control of the goods is not the sole reliance** of the bankers." (Black-letter ours.)

In connection with the foregoing authority, it is true that the Court was dealing with a prize, and the forfeiture of goods in capture, but the Court differentiates between the claimant against condemnation or capture and the general holder, and the quotation cited is from that portion of the opinion discussing the general law upon the subject.

In this we are borne out by what seems to be elementary law.

> "If, as is frequently the case, the seller has the bill of lading so drawn that the goods are deliverable to **his** order, this, in the absence of evidence of the contrary, is almost decisive in showing his intention to reserve the **jus disponendi** and **to prevent** the passing of title to the buyer. The **prima facie** conclusion that the seller reserves the **jus disponendi**, when the bill of lading is to his order, may be rebutted by proof that in so doing **he acted as agent for the purchaser** and did not intend to retain control of the property. * * * So, when the **seller** ships goods to a **third person** who is agent for delivery to the purchaser, he equally manifests the intention to reserve the **jus disponendi** and **to prevent** the property from passing to the purchaser until such delivery has been made. * * * These rules are not altered by the fact that the **consignor is indebted to the consignee for advances**, even if they may be beyond the value of the consignment." (Black letter ours.)
>
> **Am. & Eng. Enc. of Law, Vol. 124, p. 1066.**

Again, in **St. Jose Indiano, 1st Wheaton, p. 208**, we find the rule laid down in the syllabus as follows:

> "But if he intends to execute the order by his own goods or goods purchased on his own credit, and thus made his own, and consigns them **to his own house**, to be delivered to the principal, when certain conditions are complied with, **the property**

> **is not divested from the agent,** and is at his risk." (Black letters ours.)

Does this case present any of the exceptions, announced in the rule of law above set forth, to warrant the rebuttal of the presumption and to take this case out of the general principle? Is there anything to suggest that Steele, Miller & Company acted as **the agents** of the French banks for the purchase of this cotton? On the contrary, the French banks had no dealings with Steele, Miller & Company, except in so far as they were parties to the **contract d'importation** with Scheuch & Company, and in so far as they were acceptors of the drafts arranged through bankers' credit by Scheuch & Company.

Again, in the **177 U. S., at p. 671,** the Court, in disposing of the title of the property, says:

> "Even if bills of lading are delivered, that circumstance will not be sufficient unless accompanied with an understanding that he who holds the bill of lading is **to bear the risk of the goods as to the voyage,** and as to the market to which they are consigned; otherwise, though the security may avail **pro tanto,** it cannot be held **to work any change in the property.**" (Black letter ours.)

In the instant case, let the Court remember that, at the time of the marking of this cotton, at the time of the delivery to Hardin & Company, at the time of the delivery to the French line, and up to the time of the stoppage of the goods by the United States Circuit Court of

which under the custom of the trade was in the possession of the ship. Accordingly, the Steamship Company would and should have refused to deliver cotton on the through bill of lading, and the parties would have been forced to take steps to procure the cotton. This shows that at no time was the link so complete that delivery to the carrier was delivery for account of the holders of the through bills of lading.

But the French banks have further shown by the testimony of their own managers that at no time was there any appropriation of cotton to their forged bills of lading. Steele, Miller & Company had every reason not to divest itself of the control of the property. Steele, Miller & Company had every reason to insist upon retaining the control of the cotton. Steele, Miller & Company had committed a crime. The evidence of their crime was in existence and they wanted to suppress this evidence. They were willing to deliver cotton, provided the forged bills of lading were in turn delivered. Therefore, instead of intending to appropriate cotton to the through bills of lading, Steele, Miller & Company distincty intended to deliver cotton when the evidence of their crime, or crimes, was in turn surrendered.

In the opinion of the **Lovell case**, appearing at page 757, the Court states the pertinent issue by which these two cases can be differentiated, as follows:

> "In this connection a comparison of the forged and genuine bills of lading will prove instructive.

First. In this case there was no act of Steele, Miller & Company which comes within the category of acts defined by the Supreme Court as "**notorious acts** to divest himself of his title." Certainly the marking of cotton could not be construed as a notorious act divesting the owner of the cotton, because any cotton and all cotton must be marked as cotton, and is bought and sold upon marks. Certainly the act of **shipping the cotton** on local bills of lading to order notify Hardin & Company was not a notorious act, because the cotton went to Hardin & Company with specific instructions by which Steele, Miller & Company **retained possession.** Certainly the transferring of the cotton to the Compagnie Generale, and the taking therefor bills of lading in the name of Steele, Miller & Company was not a **notorious act** by which Steele, Miller & Company divested themselves of the possession, because at the moment that the cotton was delivered, Steele, Miller & Company demanded of and received from the steamship company a bill of lading **to their own order,** showing their **right** to control the shipment.

So, taking all the circumstances together, where in any act of Steele, Miller & Company, do we find a **notorious act** divesting them of possession? On the contrary, we find an open notorious act **maintaining** and **insisting** upon their possession by reason of Steele, Miller & Company taking the bills in **their own name,** and so making the shipment as **to permit them to control it at all times.**

In **Hoover v. Maher, 51 Minn., 53, N. W. Rep., 646,** the Court said:

> "Upon an order for a specified quantity of twine to be shipped to the vendee on a specified day, the separation of the quantity from the vendor's general stock and shipping it before the specified day, is not an appropriation of the quantity separated to the contract, so that the title passes. It is a condition of the vendor's authority to make the appropriation that he shall ship as directed."

It would seem that the authorities above quoted would dispose of the issue of appropriation but for the fact that it has been insisted, and was insisted in the lower Court, that the instant case was controlled entirely by the decision of this Court in **Lovell v. Newman, 192 Fed., 753.**

An examination of the **Lovell case** will disclose that the issue presented there was in no sense the issue presented here.

In the **Lovell case** the parties delivered the goods to the carrier under the identical conditions of the original contract and then suppressed the bills of lading, and from that the Court drew the presumption of an intent to appropriate, without any other resulting or continuing circumstances. In the instant case the cotton was not

shipped in the manner provided by the terms of the original contract, nor were the bills of lading suppressed, eliminating thereby any possible presumption of intent to appropriate; but, as shown, the cotton was shipped in such a manner as to give Steele, Miller & Company, and its co-partner in knowledge of crime, Scheuch & Company, full, absolute and complete control and dominion over the bills of lading and over the cotton, until such time as they saw fit to relinquish this control.

Let us look at the **Lovell case** from the standpoint of what would have happened on the other side had bankruptcy not intervened. The cotton, having been delivered to the carriers upon through bills of lading, would have been turned over by the carrier on arrival at port, to one of the designated steamship lines, and, when the cotton reached the other side, the forged bills of lading would have been presented, and corresponding in marks and form to the actual documents, and in the absence of any knowledge of the forgery, the Steamship Company would have made delivery. Let us take the instant case, supposing bankruptcy had not intervened, and supposing the port bills of lading had not been forwarded to Scheuch & Company for substitution to the French banks, but had been suppressed as in the **Lovell case**. The cotton would have gone forward, and when it reached the other side, the banks would have presented the **forged through bills of lading** and would have demanded the cotton. The steamship manifest would have shown that this cotton **was moving on port bill of lading**, copy of

Appeal, Fifth Circuit, the goods were at all times traveling at the risk of Steele, Miller & Company, and that, even at the time of delivery of the bills of lading to the French banks, no insurance papers were received by them. Supposing the cotton had been lost, could it have been successfully urged against the French banks that by appropriation, Steele, Miller & Company had discharged their obligations, and the risk rested upon the French banks?

Again, at page 667, 177 U. S., the Court says:

> "The principal strength of the argument in favor of the claimant in this case seemed to be rested upon the position that the **consignor in this case could not have countermanded the consignment after delivery of the goods to the master of the vessel**; and hence it was inferred that the captor had no right **to intercept the passage of the property to the consignee.** The doctrine would be well founded, if the goods had been sent to the claimant upon his account and risk, except in the case of insolvency. But when goods are sent upon the account and risk of the **shipper**, not of **the consignee**, it is competent to the consignor, at any time before **actual delivery** to the consignee, to countermand it, and thus prevent his lien from attaching." (Black-letter ours.)

Again, at page 666:

> "The assignment of bills of lading transfers the **jus ad rem**, but not necessarily the **jus in rem**. The **jus in re** or **in rem** implies the absolute domin-

In both the cotton was to be shipped by the Cotoniera Steamship Line to Genoa. In both the marks of cotton were identical; in both, Gavirati, the broker, was to be notified. In both, the same weights precisely were inserted. **In both the forms used by the railroad company were similar and the genuine bills were signed by the same agent, whose name was used in the forged bills.** (Black letters ours.) It is evident there was a purpose to conform the genuine bills to those that were forged. What were the purposes and intention actuating the bankrupts? They knew that the forged bills had gone forward, and were presumably in the possession of the spinners, since the drafts had been paid and they had received the money. They knew that the genuine bills of lading, so carefully designed to correspond with those that were spurious, would not be necessary to insure the delivery of the cotton to the spinners; and, with this knowledge, their plain purpose was to suppress the genuine bills and permit the cotton to proceed to its destination under the forged bills, and thus prevent exposure of the fraud, with consequent disaster to themselves. In view of these facts, who were the real owners of the cotton?"

What are the facts in the instant case? The bills of lading were as different as night is from day. One bill of lading was a **through bill of lading**, issued at the supposed origin of the shipment, and was good for the complete contract of carriage, while the second bill of lading was a **port bill of lading**, dissimilar in every sense of the term, in no way looking like the original bill of lading; in

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no sense bearing any of its marks; in no sense containing all of its terms, and only to be delivered upon the surrender of the fraudulent bill of lading. Can it be maintained for one moment that the mere fact of delivering this cotton to the steamship, with certain marks and weights, which corresponded to certain other marks and weights appearing on other documents, constituted an appropriation of the property?

There was no suppression of these latter bills of lading.

This muniment of title was sent to the French banks in exchange for the documents they had, which is exactly as if Steele, Miller & Company had borrowed from the French bank upon what purported to be a mortgage note, which, in fact, was forged, and then had substituted for that mortgage note an actual mortgage executed within the time prohibited by the statute.

Would it be maintained for a moment that the doctrine of appropriation could apply?

But, says the learned counsel for the banks, the trustee is estopped from setting up such a plea. The trustee takes no greater rights than the bankrupt, and is bound by the acts of the bankrupt.

The answer to that is that the trustee is seeking to set aside an unfair preference under a direct statutory mandate. The mere suggestion of the question would seem to bring its answer. If the trustee is estopped from setting up an unfair preference under conditions of this sort, what character of unfair preference can ever be set aside? There can be no preference without some act of the bankrupt; there can be no act of the bankrupt which he himself can subsequently question. Therefore, if the

doctrine of estoppel applies, the doctrine of the unfair preference goes out of the window for all time.

It would seem that the mere statements of the Court's decision would answer. The doctrine cannot be better said than was stated in the case of **Lovell, Trustee, 192 Fed., 760,** where the Court said:

> "But ordinarily, in the absence of fraud, or a State statute declaring the conveyance void, or unless it contravenes some provision of the bankruptcy acts, a conveyance based upon a valuable consideration, and good as between the parties, will be permitted to stand."

In the **Lovell case** the trustee was not suing under any provision of the bankruptcy statute. In none of the cases quoted by the Court in its opinion at page 761, was a trustee invoking any provisions of the bankruptcy statute. On the contrary, in the **Lovell case,** the trustee was standing before the Court as the owner of the property, claiming to hold the valid bill of lading issued by the railroad company, and in no way seeking to invoke the statute. So much so, that on the motion to affirm or dismiss, the Supreme Court of the United States, recently dismissed the suit, upon the theory that the cause came to the United States Court because of jurisdiction resulting from diverse citizenship.

In the instant case we are invoking a provision of the bankruptcy act. We have sued to set aside a preference as provided and authorized by the statute, and to attempt to quote the doctrine of estoppel, as set forth in

the **Lovell case** and the **Hentz case**, is to deliberately ignore the very words of the Court.

II.

THE DOCTRINE OF THE UNFAIR PREFERENCE.

The trustee contends that the substitution of the port bills of lading for the through bills of lading was an attempt to prefer the defendant banks, and in support of that contention the evidence is as follows:

(a). The trustee has shown that on September 1st, 1909, Steele, Miller & Company owed to the defendant banks and others twenty thousand bales of cotton.

(b). That as early as December, 1909, Steele, Miller & Company forwarded to Scheuch & Company certain port bills of lading which were to be substituted for through bills of lading.

(c). That at that time, and for three months afterwards, and at various times, port bills of lading were substituted for through bills of lading, and that the French bank surrendered the through bills of lading to Scheuch & Company, who, in turn, surrendered them to Steele, Miller & Company.

(d). That the trustee has shown, and no attempt has been made to contradict him, that the existence at the

same time of through bills of lading and port bills of lading for the identical cotton was and is an unheard of event, and one to immediately provoke the thought of the perpetration of a fraud.

(e). That at the time that all of the defendants (except the Societe Generale) received the port bills of lading herein referred to, the defendants had been directly advised by Steele, Miller & Company, through Scheuch & Company of the fact that Steele, Miller & Company had suspended.

(f). That, as will hereafter be discussed in some of the cases, the port bills of lading were substituted for the through bills of lading after a petition for involuntary bankruptcy had been filed.

The defendants, as we understand their position, contend that they knew nothing of the insolvency of Steele, Miller & Company; that they knew nothing of any desire or intent to prefer them, and pitch their case, so far as the preference is concerned, upon their ignorance of the alleged attempts at preference, claiming that in order to constitute a voidable preference it is necessary that the party who receives the preference shall have knowledge of the intention to prefer.

Let us at this point (and we will assume the burden of proof) analyze the proof on the part of the trustee.

1° The trustee has proven that at the time that the French banks received the bills of lading in substitution, Steele, Miller & Company, and the individual members of

said firm, were insolvent, and were insolvent since September, 1909.

2* The trustee has proven that with the exception of the Societe Generale, when the substitution of the bills of lading was made, the banks had been directly advised by **Steele, Miller & Company of their suspension.**

3* The trustee has proven that as to some of the bills of lading, (which will be discussed under a separate head), bankruptcy proceedings had been instituted against Steele, Miller & Company.

4* The trustee has proven that two evidences of title, as represented by two sets of bills of lading for the same property, could not exist and be in circulation at the same time.

5* The trustee has proven the frame of mind of the French banks in that they held and kept the port bills of lading in addition to the through bills of lading as a matter of precaution.

As against this the defendant banks offer the explanation that while it is true that the substitution of bills of lading was and is something unknown to the business world, they were lulled into a sense of security because of the fact that on previous occasions when this had occurred; they had asked Scheuch & Company for an explanation; that Scheuch & Company had advised them that they had inquired of Steele, Miller & Company as to the facts, and that Steele, Miller & Company had advised Scheuch & Company that they had an arrangement with the carrier by which they could secure port bills of lading while the cotton was in transit, and upon

this explanation of Steele, Miller & Company, made through Scheuch & Company, and their denial of any knowledge of any intent to prefer, they ask the Court to decline to apply the doctrine of the unfair preference.

In the argument in the lower Court the learned counsel for the defendants furthermore contended that in order to avoid a preference it was necessary to establish four points:

1° That a preference resulted;

2° That at the time of the preference the parties were insolvent.

3° That the bankrupt intended a preference; and,

4° That the party receiving the preference knew or should have known that a preference was intended.

Assuming, for the purpose of argument, that the position of counsel is correct, we can dismiss three of these propositions with the statement that they are absolutely proven by the record, to-wit:

(a) The record shows insolvency.

(b) The testimony of Linde shows that Steele, Miller & Company intended to furnish Havre with its cotton to the detriment and at the expense of the other creditors.

(c) That at the time of the delivery by which the preference would have been perfected, but for this suit, the defendant banks had asbolute, positive and direct knowledge of the insolvency of Steele, Miller & Company.

This leaves us solely to the question as to whether or not three of the facts claimed by counsel to be necessary

to a preference having been established; the other will not be presumed.

We insist that it is simply necessary to show that at the time of the substitution of these bills of lading the defendant banks were advised of the insolvency of Steele, Miller & Company to establish a presumption jure et de jure that they knew, or should have known, that a preference was intended.

At this time we desire to call the attention of the Court that despite the evidence of the trustee to prove the custom of the trade, the defendants have rested their case solely upon the testimony of their own employees, the managers of their banches in Havre.

Now, what are the facts as shown by the evidence? Let us eliminate at this time the case of the Societe Generale. Its bills of lading were substituted on the 26th, and its case will be the subject of a separate discussion. The other cases were substituted subsequent to the 26th and after Steele, Miller & Company had cabled Scheuch & Company of their suspension, and after Scheuch & Company had formally notified the French banks of this suspension.

In the case of the **Virginia Hardwood Company, 139 Federal, 209,** the Court said:

> "Under **Bankr. Act July 1, 1898,** (and the amendments) defining a preference, and providing that if a bankrupt shall have given a preference, and the person receiving it shall have had reasonable cause to believe that it was so intended, it shall be voidable by the trustee, etc., it is not necessary, in order to entitle the trustee to recover a prefer-

ence, that the preferred creditor should have in fact believed, when he took the preference, that the debtor was insolvent, or that he had reasonable cause so to believe at that time, but it is sufficient that the facts and circumstances with reference to the debtor's financial condition brought home to the creditor were such as would put an ordinarily prudent business man on inquiry, which, if pursued, would lead to knowledge of the debtor's insolvency."

In the case of **Parker v. Black, 143 Federal, 561,** the Court sums up the test of the unfair preference in these words:

"The principle is not controverted that if the defendants, creditors of the bankrupt, had reasonable cause to believe that the bankrupt was insolvent at the time of the payment to them of the pre-existing debt, an unlawful preference was created within the purview of the statute. By Section 60, subd. 'a,' a preference consists of a transfer of property to a creditor by an insolvent before an adjudication in bankruptcy and within four months prior to filing a petition; such creditor having reasonable cause to believe that it was intended to give a preference. **Hence it follows that, if the evidence shows that the debtor was insolvent at the time of the payment of the debt and the defendants knew of his financial condition, the transfer of the money to apply on account of the pre-existing indebtedness was a preference, irrespective of whether the bankrupt intended to give a preference or not. His insolvency at the time of payment is undisputed. The payment of the amount which is sought to be recovered resulted in giving the defendants greater benefit than other creditors**

of the same class have in the distribution of the bankrupts' estate.'' (Black letters ours.)

In the case **''In re Gesas,'' 146 Federal, 734,** the Court said:

> ''All these facts considered were sufficient to put the banks upon its guard and to have at least suggested to it a suspicion of the insolvency of its debtor. But, admitting that the transfer was made in good faith upon the part of the bank, it was without any present consideration whatever, and in that is obnoxious to the law.''

In the case of **Parker v. Black, et als., 143 Federal,** page 560, the Court said:

> ''A payment made by an insolvent to a creditor within four months prior to the debtor's bankruptcy may be recovered by his trustee as a voidable preference, under Bankr. Act, July 1, 1898 (and amendments) if the creditor had reasonable cause to believe a preference was intended, irrespective of the debtor's actual intention; **and such reasonable cause exists if the creditor had knowledge of the insolvency, or of facts which reasonably charge him with such knowledge.''** (Black-letters ours.)

And at page 562 the Court said:

> ''The principle is not controverted that if the defendants, creditors of the bankrupt, had reasonable cause to believe that the bankrupt was insolvent at the time of the payment to them of the pre-existing debts, an unlawful preference was created within the purview of the statute.''

In the case of **Coleman v. Decatur Egg Company, 186 Federal, 136**, the Court said:

> "The bankrupt was hopelessly insolvent. That he intended a preference is inferred as a necessary consequence of his act in giving the mortgage (which in that case constituted the challenged transfer) while in such financial condition. * * *"

In the case **In re Hoghton Web Co., 185 Federal, 213**, the Court said:

> "A transfer of assets by a bankrupt to a creditor within four months prior to bankruptcy, though with intent on the bankrupt's part to prefer the creditor, is not a voidable preference, unless the creditor had reasonable cause to believe that a preference was intended, **or unless the proof shows that creditor knew or ought to have known the substantial truth concerning the bankrupt's financial condition.**" (Black letters ours.)

In the case **In re. Thomas Deuschle & Co., 182 Federal**, at **page 435**, the Court said:

> "Bankrupts being indebted to claimants on notes for lumber which had frequently gone to protest, claimants had accepted another order for lumber, and were about to fill it, when they learned that the bankurpts were in difficulty and did not do so. They were advised on inquiring at a bank where the bankrupts were in difficulties and did not do so. They were also advised, on inquiring at a bank where the bankrupts were in business, that their condition had improved. It was thought that they would pull through. **Held**, that such information was sufficient to put **the claimants on inquiry as to the bankrupt's financial condi-**

tion, and that payments thereafter made and received within four months prior to bankruptcy constituted voidable preference.'' (Black letters ours.)

And the Court said:

> ''Where bankrupt's creditor had placed his claim in the hands of a collection agency, and had threatened suit unless it was paid, involving a possibility of insolvency, the creditor would be presumed to have had knowledge of the debtor's insolvent condition, so as to make payments made within four months of bankruptcy preferences.''

In the case **In re Alexander v. Redmond, 180 Federal, page 96,** the Court said:

> ''Whatever may have been the hopes and expectations of the offices of B. and Company, as to their being able with outside help to weather the storm, we are satisfied that when the transfer was made the agent of Redmond and Company had reasonable right to believe that B. and Company were insolvent, and that the effect of the transfer would be to enable them to obtain a greater percentage of their debt than other creditors of the same class, in the event of the insolvent not being able to secure further capital to enable it to go on and pay all its debts in full. We think such 'belief,' with which, on the proof, Redmond and Company are chargeable must be held to be a 'belief' that it was 'intended' thereby to give a preference.''

In the case of **In re C. J. McDonald and Sons, 178 Federal, at page 487,** the Court said:

> ''A creditor of a bankrupt receiving security under circumstances indicating that his debtor is

insolvent is required to exercise ordinary prudence to ascertain such fact; and, if he fails to investigate, he is chargeable on an issue as to whether such security constitutes a preference with all the knowledge which it is reasonable to suppose he would have acquired if he had made inquiry."

Again, the Court said, quoting from page 492:

"Positive proof of collusion between debtor and creditor, by which one may be preferred, is not generally to be expected, and for that reason, among others, the law allows a resort to circumstances as the means of ascertaining the truth, and the rule of evidence is well settled that circumstances inconclusive if separately considered may by their joint operation, especially when corroborated by moral coincidence, be sufficient signs of insolvency were too many and too marked not to warn the president of this bank that he was getting a prohibited advantage over other creditors. The facts are so persuasive that they would have given reasonable grounds for suspicion to persons far less astute and less accustomed to the ways of business in general than was the president of this bank."

In **Lewis v. Julius, 212 Fed., p. 225,** the Court said:

"Transactions known by a purchaser from a bankrupt to be out of the **usual** and ordinary **course of business** tend to negative good faith in determining whether they are void as in fraud of creditors."

From the foregoing authorities, all of which were decided subsequent to the amendment of 1903, the Court will note the jurisprudence makes two tests in its application of the doctrine of unfair preference, and these are,

1* If the party has reasonable grounds to believe that his debtor is insolvent, then the presumption of a preference instantly arises;

2* If the party has reasonable grounds to believe that a preference is intended, then the presumption of insolvency immediately arises.

In other words, it is unnecessary to prove insolvency and the intention to prefer. It is sufficient to prove that the act complained of was performed; that the party had reasonable grounds to believe that one of the two conditions existed, either insolvency or intent to prefer, and belief and knowledge of one carries with it imputation of belief and knowledge of the other.

In the instant case the evidence is positive that at the time of the substitution of the bills of lading, the defendants actually and positively knew that Steele, Miller & Company had suspended. This information was conveyed to them through Scheuch & Company, to whom Steele, Miller & Company had addressed a cable announcing their suspension. This act of Steele, Miller & Company alone was an act of bankruptcy, in that they admitted in writing, by virtue of this cable to Scheuch & Company their inability to pay their debts.

But, say the French banks—on various occasions, previous to all this, Steele, Miller & Company, through Scheuch & Company had substituted bills of lading, although we knew of the insolvency of Steele, Miller and

Company at the time—we believed the bills of lading were furnished us only in pursuance of the agreement to furnish cotton.

Let us look at the situation for a moment from this point of view. It is true that at various times Steele, Miller & Company did substitute port bills of lading for through bills of lading. On the first occasion, the Societe Generale and the Credit de Mulhouse were astonished at the possibility of this transaction and immediately made inquiry, and were lulled into a sense of security, as they claim, by the statements of Scheuch & Company and the statements of Steele, Miller & Company.

Here is the evidence of the representative of "La Societe Generale," appearing at page 678 of the record.

In considering this evidence, let the Court remember that La Societe Generale is one of the largest, if not the largest bank in France; that its dealings in foreign exchange go into untold millions, and that the French people are in reality the bankers of the world.

Read this testimony and consider that either the Havre branch of La Societe Generale was in the hands of a school-boy in finance or was in the hands of a man who did not hesitate to adapt his views to convenience.

Interrogatory No. 21:

> "Please state whether on any prior occasion or occasions the said bank had received custody of bills of lading purporting to represent the same cotton covered by through bills of lading attached to drafts for the price of the cotton, which had been previously accepted by the bank. If yes, please state on what occasions, and what, if any, explanations were given, and whether the same

were believed by the bank. Please answer this question fully.

"What effect had such previous experience and explanation in causing said bank to suspect or not to suspect fraud or wrong on the part of Steele, Miller & Company when it received said duplicating custody bills of lading covering the said four hundred bales of cotton?"

To the twenty-first interrogatory he saith:

"Before the date 26th of April, we had received out of a total amount of 8,000 bales for that season, covered by through bills, and received against drafts drawn by Steele, Miller & Company three port bills covering 300 bales of cotton, which were already covered by the through bills, and had the same numbers and marks. When Scheuch & Company remitted us these port bills, with support notes attached, they took up the corresponding through bills to return same to Steele, Miller & Company, who had to give them to the railroad company who had issued same."

"These exchanges of through bills took place on the following dates:

"7 December, 1909, 100 bales, 'Mexico' port bill.

"14 February, 1910, 100 bales, 'Virginie' port bill.

"20 April, 1910, 100 bales, 'Honduras' port bill.

"(I join copies of Messrs. Scheuch & Co.'s memos. as Exhibits 34, 35 and 36.)

"On the 7th of December, 1909, I asked Messrs. Scheuch & Company to explain this abnormal fact—namely, the existence of two bills for one and the same shipment of merchandise. This I

did on principle, because it only concerned 100 bales out of a total engagement of 3,100 bales.

"I told Mr. Scheuch the following:

"**Firstly.** This may become dangerous. Suppose, instead of only 100 bales, it concerned larger quantities; and, supposing the exporters are dishonest, they could then draw new drafts, to which they could attach these port bills, on other banks, and in such a way get paid twice for the same shipment.

"**Secondly.** Has this port bill been addressed to you by Steele, Miller & Company free of charge, or have you accepted a direct draft on yourself in exchange for same?

"**Thirdly.** Have you noted anything in the way of working with your good selves which might arouse your suspicions as to the solvency or honesty of Steele, Miller & Company?

"Here are Messrs. Scheuch & Company's answers in numerical order:

"**Firstly.** Your argument is sound, but we believe Steele, Miller & Company incapable of acting dishonestly. In order to obtain a port bill when a through bill is already in existence, they perhaps have to give security to the company, and by giving up that through bill that security may be returned to them.

"**Secondly.** That port bill has arrived free of charge, without us having accepted a draft, and without Steele, Miller & Company having asked anything, except the return of the through bill. Moreover, we would have refused to pay anything against the port bill, which belongs to you.

"**Thirdly.** We have every confidence in the way Messrs. Steele, Miller & Company work, and here is a detail of their punctuality: On the ar-

rival of the cotton we never fail to claim differences in weight and quality, which we sometimes detect. On our simple demand by cable, without even having received our detailed statement by letter, they cover us at once by cable transfers for these differences."

This statement shows that the French bankers considered the conditions abnormal.

The record shows that on the 18th day of April, 1910, the financial world was shocked by the failure of Knight, Yancey & Company, who had been perpetrating the same character of frauds as Steele, Miller & Company. The evidence further shows that by some peculiar condition, while the French banks had been previously surrendering the through bills of lading for the port bills of lading in substitution, they, on this occasion, retained both **as a matter of precaution.** What, then, was the attitude of the French banks at the time that Scheuch & Company substituted for Steele, Miller & Company the bills of lading, after September 29th?

The failure of Knight, Yancey & Company, together with the announcement of the issue of forged bills of lading, had been proclaimed throughout the world. The failure of Steele, Miller & Company had been brought home directly. The banks remembered the fact that Steele, Miller & Company had been "kiting" bills of lading to an extent sufficient to arouse their suspicions and to require an explanation. The banks knew, or should have known, at the time of the Knight, Yancey failure, that their fears and misgivings, which had been quieted by the statements of Steele, Miller & Company,

were correct, and that the acts of Steele, Miller & Company in substituting through bills of lading were so uncommon as to actually suggest and impress the grossest frauds. Therefore, at a time subsequent to the 29th of April, when the direct knowledge was brought home by the cable of Steele, Miller & Company, it was a direct and absolute suggestion to those banks of the fraud which had been perpetrated, and **there must or should have been a reoccurrence to them of the impossible conditions by which the substitution of the bills of lading was accomplished.** And when they sat in their offices subsequent to the 29th of April, with the knowledge of the suspension of Steele, Miller & Company, and received these bills of lading, they knew they were receiving something for nothing, and that this something had been procured outside of the ordinary course of business.

The Time of the Preference and the Relations of Scheuch & Company.

The defendants claim that Steele, Miller & Company made the delivery of these bills of lading at a time unsuspicious; that the actual delivery took place at the time they deposited these bills of lading in the United States mail, addressed to Scheuch & Company, and that no suggestion was made that at that time the banks knew, or had reasonable cause to know, that Steele, Miller & Company was insolvent.

This brings us to a discussion of the relations between Scheuch & Company and Steele, Miller & Company, and between Scheuch & Company and the banks. In other

words, whose agents were Scheuch & Company? This necessitates that we sum up the evidence applicable to the case.

1. The contracts for advances, or the "engagements d'importation," were made by the banks with Scheuch & Company. Scheuch & Company were their customers. They were primarily responsible to them, and Steele, Miller & Company, with their drafts and their bills of lading, were only responsible to the extent that the cotton stood as security for the advances agreed upon with Scheuch & Company and credit extended to Scheuch & Company.

2. The banks had no dealings of any character or nature with Steele, Miller & Company, beyond the acceptance of drafts through their engagements with Scheuch & Company.

3. Scheuch & Company, and the individual members of the firm of Scheuch & Company knew early in March the method adopted by Steele, Miller & Company in using forged bills of lading and substituting through bills of lading. When his conscience was probed, Scheuch admitted the entire transaction, but maintained that he had kept his secret "hoping that Steele, Miller & Company would work out."

4. Whenever through bills of lading were forwarded to Scheuch & Company, they were forwarded instructions and with the general understanding that they would be substituted for the through bills of lading, and the through bills of lading would be returned. On each and every occasion previous to the acts complained of

this was the course followed, and the through bills of lading were returned by the banks through Scheuch & Company.

Therefore, discussing the matter from the standpoint of agency, when Steele, Miller & Company mailed these letters to Scheuch & Company, to whom were they delivering the bills of lading?

It was claimed that the delivery to Scheuch was complete because Scheuch was a party to this contract. If that statement is to prevail, then we say the evidence of knowledge multiplies, because it is in the record that early in March Scheuch was familiar with frauds. Scheuch knew the method; Scheuch & Company were begging and cabling to Steele, Miller & Company to ship cotton to make them good, and when Scheuch & Company received these bills of lading, Scheuch & Company not only knew that Steele, Miller & Company were insolvent, but they knew that Steele, Miller & Company had perpetrated a gigantic fraud in which they were silent partners, and they knew that these bills of lading were coming forward in response to their cables to Steele, Miller & Company begging them to make good, and the fear of Steele, Miller & Company that Scheuch & Company would expose them. So, therefore, in so far as it is contended that delivery to Scheuch & Company was a delivery to one of the parties, who had a right to receive the bills of lading, we suggest that every possible avenue of escape is closed to the defendants.

If these bills of lading were not delivered to Scheuch & Company because of their right to receive them, and because they were parties to the contract, then why were

they delivered to Scheuch & Company? Was Scheuch the agents of the banks? This the banks deny. If they were the agents of the banks, however, were they the agents with full and absolute authority to deal with Steele, Miller & Company on this subject, because, if they were, when the firm received the bills of lading from Steele, Miller & Company it received them impressed with the condition that the forged bills of lading should be returned. No part of the record will suggest that Scheuch & Company had any authority to waive any of the previous conditions of the contract; but, on the contrary, the evidence shows that, when the bills of lading were received, Scheuch & Company promptly delivered them to the banks and the banks carried out the condition of the delivery, to-wit, the return of the through bills of lading.

Were Scheuch & Company, then, the agents of Steele, Miller & Company, and, if so, what was the extent of that agency? The record shows that **quo ad** these bills of lading, Steele, Miller & Company used Scheuch & Company as the intermediary, through whom the substitution and exchange would take place. In other words, Scheuch & Company, as well as Steele, Miller & Company were directly interested in suppressing the evidence of the fraud, and when the bills of lading went to Scheuch & Company they went impressed with the condition and direction that they be delivered in lieu and in place and on return of the evidences of the fraud.

At this time, we call the Court's particular attention to the fact that, by a peculiar circumstance, all of these French banks, the managers of which deny emphatically

and positively that they ever had a conference on this subject, and all of whom testify that on all previous occasions they surrendered the old bills of lading, by some common method of thought, by some method of telepathy, all without consultation, pursued the same course, to-wit, retention of both sets of bills of lading, and all give the same excuse, to-wit, precaution, and they say that at the time they did this, they did it without the slightest idea that Steele, Miller & Company was doing anything outside of the ordinary course of business.

And here, let us examine the record for a moment to show the mental attitude of the French banks and to show what really was passing in their minds.

Linde swears that he was being constantly cabled to for the cotton. The banks denied that they made any inquiries. But what does the record show? The record shows that every statement that Linde made, both in his confession and in his evidence, was true. Scheuch, when his conscience was probed, admitted his participation in the fraud to the extent that Linde mentioned. Scheuch again confirms the statement that Linde was constantly being cabled to in the name of the banks, but he says he did that because he thought it would have greater influence. Riss denies having cabled for this particular cotton, but admits that the Hendren cables, through the Compagnie Generale Transatlantique, were sent by his instructions and at his request, but referred to other cotton. These cables show investigation started April 25th. Therefore, we ask your Honors to read the testimony of Linde, and particularly Linde's letter, appearing on page 185 of the record, examine the admis-

sions that have been wrenched from the defendants, and the Court will find what Linde has said to be true. The banks were in a turmoil, they were worrying and harrassing him for his cotton, and their persistency was such that he feared exposure while in Havre and then confessed to Scheuch.

With all of these facts before the Court, let us again revert to the conditions that existed at the time that the bills of lading were exchanged, and let us analyze each case separately.

Paul Chardin. He purchased cotton under contract, the cotton only to be accepted when it classed up to standard. In other words, according to the testimony of Riss, Chardin's manager, the usual, ordinary and customary methods of sale were not adopted. These usual, ordinary and customary methods were and are, that if an American shipper ships cotton against a contract, and this cotton does not class to the grade of the contract, the purchaser must accept the cotton subject to a deduction by arbitration. In this case, Riss testifies that this contract eliminated the ordinary, customary methods of trade, and required that cotton should be of the grade acceptable to him, and failing to be of such grade, he had the right to refuse it after delivery at Havre. Riss testifies that the correspondenc between the Compagnie Generale Transatlantique and Hendren by way of cable was done on his demand. He testifies further, that he never received any substitution of bills of lading until this particular transaction complained of. His bills of lading were delivered on the 3rd and 7th. When he demanded of the Compagnie Generale that it locate his cot-

ton, he must have had some reason to believe that something was wrong. His reason was that the Knight, Yancey & Company failure had been spread all over the world. It had occurred seven days before—the details of this affair had become general knowledge. He knew when the Hendren reply came that he had been defrauded on some transaction, but, in order to establish his mental attitude at the time of the exchange of bills of lading, it makes no difference what transaction he was inquiring about. He was inquiring and got information about Steele, Miller & Company's methods. He admits that on the 23rd of April information was received concerning Steele, Miller & Company going to protest in Bremen. He admits that he heard of the cables sent by the New Orleans house to the Havre correspondent concerning Steele, Miller & Company. He admits that the **Havre Bulletin** is a journal of general circulation in the cotton trade. He admits that on the 29th of ~~September~~ March he received a direct report from Scheuch & Company concerning the suspension of Steele, Miller & Company. Having admitted so much, the common knowledge of the trade must be imputed to him.

The balance of the cotton world knew that the Steele, Miller & Company failure was identical with the Knight, Yancey & Company failure.

That on the 26th of April, the Circuit Court of the United States ~~for the Fifth Circuit~~ had enjoined Steele, Miller & Company from further operations and had appointed a receiver upon the direct charge of fraud.

That on the 4th of May involuntary bankruptcy proceedings had been instituted and a temporary receiver

appointed by the United States Circuit Court, ~~of Appeal for the Fifth Circuit~~

We have shown the sensitiveness of the cotton market, and have shown how rapidly all details traveled. We have shown the details brought home direct to Mr. Riss. Despite his denial, we have a right to say that he was aware of the other great moves made in this case—to-wit, **the appointment of a receiver by the United States Court and the action in involuntary bankruptcy.**

Therefore, on the 3rd day of May, when Scheuch & Company presented to him a custody bill of lading in lieu and instead of the through bill of lading which he had, he cannot say that he thought it was all right. **He had never made any exchange of bills of lading before. The transactions were new to him.**

When this bill of lading was presented to him, what does the law impute to him? **(1)** That the transaction was absolutely irregular and impossible in the business world; and

(2) That the men seeking to make this substitution were insolvent.

He knew this insolvency arose by reason of the perpetration of one of the most gigantic frauds the century had witnessed. All of its details had been laid bare and the entire cotton world was talking about it. Millions had been lost, and yet he said that he had no reason to suspect that an attempt was being made to prefer him. (Rec., p. 491.)

The **Banque de Mulhouse** had the same information as Riss, except that its manager denied that he caused any cables to be sent. It received its bills of lading be-

tween May 3rd and May 7th. In this connection, let us remember that the Hendren cables (Rec., p. 253), denying the existence of bills of lading, and denouncing the fraud, had reached Havre in reply to the cables sent by the Compagnie Generale at the request of Paul Chardin. The fraud was exposed; it was there. The evidence shows that all the rumors, all the statements, all the cablegrams appertaining to Steele, Miller & Company that went to one bank went to the other defendants. They testified absolutely and positively alike. They testified in the same words on the preliminary hearing. In the cross-interrogatories, the Court will notice where we reproduce a portion of the affidavit of each of the defendants concerning knowledge, and ask them if that statement is correct. On the preliminary hearing they all testified in identical words as to notice, and each one's testimony shows the fragments of each were communicated to everybody. We, therefore, have a right to presume that this particular information, which came into Chardin's possession through the Compagnie Generale, came to the other defendants.

Therefore, on May 3rd and May 7th, after the written notice of Steele, Miller & Company to Scheuch & Company; after the injunction by the Circuit Court of the United States ~~for the Fifth Circuit~~, and the appointment of a receiver; after the publication, and after the world knew all the facts, the Banque de Mulhouse permitted its exchange, and at the moment of the exchange it did not do what it had done ordinarily—return the old bills of lading, but **it held on firmly to both sets of bills of lading as a matter of precaution.**

May we ask the necessity for precaution on that date? Why did they take this precaution when they had no suspicions and the good faith of their customers was not questioned? The mere use of the word "precaution" shows that something was revolving in the mind of the Banque de Mulhouse and that something was the knowledge of the condition of affairs and the determination to hold on to everything so as to come out whole.

The **Comptoir d'Escompte de Mulhouse** received its bills of lading under date of May 7th. Direct knowledge of the suspension of Steele, Miller & Company had been brought to it. Proceedings in involuntary bankruptcy had been filed, a temporary receiver appointed, and the world knew all the facts. These gentlemen also, without any conference with anybody else, violated the previous course of conduct and retained the through bills of lading "as a matter of precaution."

The **Credit Havrais** permitted its substitution on May 7th. The same state of affairs existed, and it also retained its bill of lading "as a matter of precaution."

The **Societe Generale** received its bills of lading on April 26th. It denies knowledge. The testimony of the representative of the Societe Generale is a denial of everything he could deny and an argument in favor of the defendants.

This witness was fencing with the Court. Every word of his testimony suggests insincerity and a desire to evade the truth. He admits having received notice of Steele, Miller & Company having gone to protest in Bremen; he admits that the **Havre Bulletin** published it, but he says that these were mere rumors, and he had no

reason to act on mere rumor. This is the same man who, when the substitution of bills of lading first took place, asked the very questions that we ask. **How is it that Steele, Miller & Company can have two evidences of title to the same cotton at the same time?**

How can business be transacted on this basis?

His testimony shows participation in persistent **kiting** by permitting the interchange of bills of lading. Now, what was his frame of mind on the 26th of April, when he received his bills of lading? He knew that Steele, Miller & Company were in financial difficulty. He knew that the cotton world was turned upside down by the Knight, Yancey & Company failure; he knew that the Knight, Yancey & Company failure resulted from the use of fraudulent bills of lading; he knew his cotton had been delayed beyond any reasonable time; he knew that at the very first attempt at the substitution of bills of lading his suspicions had been aroused to the extent of making written inquiry of Scheuch & Company. He knew that Steele, Miller & Company had been kiting. And all of this knowledge, coupled with the non-delivery of the cotton at that time, caused him to revolve in his mind the absolute and positive fact that this was a plain substitution done for the purpose of delivering to him cotton under conditions by which he would be preferred. Whether the motive was to prevent the French bankers from prosecuting Steele, Miller & Company, whether the motive was to protect Scheuch & Company and thereby protect the banks, he knew he was getting something he was not entitled to in the face of all the facts.

Kiting Is the First Signal of Insolvency—It is the Danger Signal for Fraud.

In the case of the **First National Bank v. Abbott, 165 Federal, 853,** the Court had before it the case of what the Court termed a corporation of the highest grade, dominated by a president, a man of the best reputation, both recommended by reliable bankers of St. Louis. An assignment was made of some open accounts. The officers and agents of the bank testified that they did not believe that the assignment was intended as a preference or that the debtor was insolvent. The Court found that the parties had been kiting by depositing their St. Louis checks in the Philadelphia bank, and drawing same out the same day. **The officers of the bank, men of the highest standing, testified that they knew nothing of** a preference, and were **not advised of insolvency.**

The Court said:

> "Before the bank took the assignment here in controversy, it knew that the **shoe company had persistently been kiting;** that it had failed to maintain its credit deposit; that its local bank in St. Louis refused to pay its checks to the amount of $70,000, and that some of them had laid protested for weeks; that the corporation, after repeated demands by telegraph, by letter and in person, were unable to pay them, and that the Third National Bank in St. Louis, where the shoe company had a line of discount of $200,000, had compelled it to close its account because it insisted upon a perpetual loan."

The transaction was set aside as a preference.

Now, take Mr. Lysell's testimony and consider it in connection with this discussion. Lysell knew that Steele, Miller & Company had been persistently kiting. He did suggest it on the very first occasion, but claims he was lulled into a sense of security by the statement of Scheuch & Company. The testimony of Mr. Janvier, Mr. Fulton, Mr. Breton and Mr. Hendren shows what a reasonable prudent man would and should have thought of the matter. None of these bankers had ever heard of conditions where two sets of bills of lading could be outstanding. (Rec., pp. 116, 121, 245.)

Mr. Hendren says the act spelt fraud.

Therefore, we say that the law imputes to Lysell the knowledge of the fact that kiting was going on—persistent kiting. Whatever may have been his motive in permitting this kiting, is no concern of ours. The fact remains that he permitted substitution of bills of lading some fifteen or twenty times, and we think that that is sufficient to warrant the suggestion of persistent kiting. He knew that the firm had failed to make good on its shipments and that large amounts of cotton were due to Havre. He knew all the facts that the other knew, and he swears that on the occasion of this transaction, which we still refer to as "the kite," he did not permit kiting, but **held the old bills of lading as well as the new ones as a "matter of precaution."** The record shows that some few days before, he permitted a substitution of bills of lading, and that at that time he surrendered the old bills of lading. Why, then, previous to the Knight Yancey

& Company bankruptcy and previous to these statements concerning Steele, Miller & Company's insolvency, did he deliver the old bills of lading and then suddenly take "precautions." He swears he knew nothing. Mr. Lysell has evaded the question. The facts show that there was something revolving in his mind; that he did not treat this transaction as he treated other transactions; that he benefitted by this transaction and was unwilling to surrender to Steele, Miller & Company what he had previously surrendered. He should be judged by the ordinary standards which govern ordinary men, and the law will impute to him kuowledge of the conditions on the date that he permitted the substitution.

Mr. Lysell was given an opportunity to vindicate his business methods, and he was asked if he could ever name a case where there had been substitution of the character mentioned. Mr. Lysell said with a great flourish of trumpets that he could name one case, and he produced two bills of lading from Galveston, Texas, which he says "were sent to him with a letter of guarantee by a bank." Mr. Lysell, with his usual evasion, does not give the name of the party in whose favor the bill of lading was made, so that his evidence cannot be exploded or his facts contested. The mere fact that he received these two bills of lading with a letter of guarantee by an American bank shows that this was a transaction which could and can stand daylight, and that the American bank knew that the mere attempt to deliver both a through and a port bill of lading for the same cotton would probably result in rejection, and therefore accompanied it with bankers' guarantee. Mr. Lysell's whole testimony is full of de-

mals; in fact, too full of denials, and incidentally, we call the Court's attention to the fact that on the preliminary hearing, he also testified as to knowledge in the identical words of the other. The knowledge of one was the knowledge of each.

The defendants claim, however, that, even though the bills of lading were delivered to them at a time when knowledge of insolvency existed, and even after involuntary bankruptcy proceedings had been instituted, the delivery was made in pursuance of a contract entered into more than four months previous and at an unsuspicious time.

In discussing this matter, it must again be called to the attention of the Court that the banks were not the contractors with Steele, Miller & Company, but were simply the holders of the bills of lading as security against acceptance. In so far as the banks were holders of security, their security was worthless—it was forged paper of no value.

It would seem, however, that it is unnecessary to argue this question, as the matter has been absolutely settled by the Circuit Court of Appeals for the Eighth Circuit, in the case of **Great Western Manufacturing Company, 152 Federal, 123.**

In that case the Court, through Judge Sanborn laid down this principle:

> "A mortgage or transfer of his property by an insolvent debtor within four months of the filing of a petition in bankruptcy against him, which otherwise constitutes a voidable preference, is not

deprived of that character or made valid by the fact that it was executed in performance of a contract to do so made more than four months before the filing of the petition."

In the case of **Forbes v. Howe, 3 A. B. R., 475, 102 Mass., 427,** the Court said:

"A mortgage given by an insolvent debtor to secure advances previously made is not purged of its character as an unlawful preference, because it was given in pursuance of an agreement on which the advances have been made; nor because the debtor was induced to give it by the hope of obtaining further credit or means for the continuance of his business; nor because it was intended to make up security which had been reduced by the sale, with the consent of the mortgagee, of property included in a previous mortgage to him, under an understanding that new security should be given."

As a matter of fact, the transaction here complained of was nothing more nor less than substitution of securities at a time when the insolvency of one of the parties was common property. It, therefore, comes within the principle clearly announced by all the text writers and supported by abundant authority.

"A mere exchange of one kind of property or security for another of equal value does not constitute a preference." **Remington on Bankruptcy, page 774.**

"**But if New Securities Exceed Value of Old Preference Arises.** If new securities of greater value are given, and additional securities are

given, the rule that an exchange of securities is not a preference does not apply; or, if the prior securities were of doubtful value, to the extent of the increase of value, the transfer may be preferential." **Remington, p. 774.**

In re Manning, 123 Federal, 180, the Court said:

"There is nothing in the bankrupt law which forbids an excange of securities, and if a person, even while insolvent, makes such exchange as will not diminish the value of his estate, it is unimpeachable; but the Court is bound, when such a transaction is reviewed, to satisfy itself that the securities exchanged are of undoubtedly equal value."

In the case of **Obiter Iron and Supply Co. v .Rolling Mill Co., 125 Fed., 794,** the Court said:

"An exchange of securities within four months of the proceedings in bankruptcy is not a preference within the meaning of the Bankruptcy Act, if the security given up is a valid one when the exchange is made and if it be of equal value with the security substituted for it, or of not greater value."

In re Reese-Hammond Fire Brick Co., Soission v. First Nat. Bank of Pittsburg, 131 Fed., at page 643, the Court said:

"It is too well settled to require discussion that an exchange of securities within the four months is not a fraudulent preference within the meaning of the bankrupt law, even when the creditor and the debtor know that the latter is insolvent, **if the**

> **security given up is a valid one when the exchange is made, and if it be undoubtedly of equal value with the security substituted for it.''** (Black letters ours.)

And as authority for this statement, the Court quotes **Sawyer v. Turpin, 91 U. S., 114, 120; 23 L. Ed., 235,** and **Stewart v. Platt, 101 U. S., 731, 742; 25 L. Ed., 816.**

The Court will, therefore, see that the test of a transaction of this character is that there can be an exchange of securities, provided, **the securities are of equal value,** and as Judge Sanborn said in the last quoted case, the **security given up is a valid security.**

An examination of Mr. Breton's testimony explains fully what the ''engagement d'importation'' is, and shows that the relation is nothing more nor less than one of acceptance with security. Therefore, as we have insisted throughout these proceedings, the attitude of the defendant banks was simply that of creditors with security. The security was twofold: (1) the personal security of Schenck & Company, and (2) the security of bills of lading held in their possession until their acceptance had been discharged. Therefore, when they surrendered these bills of lading, they surrendered a security upon which they had advanced this money for a security which had come into existence at a subsequent time and which was delivered to them with knowledge of insolvency.

The security given up was an invalid, worthless security.

The security substituted for or added to the security which they had was a valid, binding obligation of the steamship company, which, as stated, had come into existence at a time long after the alleged security which they had given up.

This case narrows itself down to a substitution of a valid security, for an invalid security, or the addition of a valid security to an invalid security for a pre-existing debt, and with full knowledge of insolvency.

In conclusion, the trustee submits that he has proven all of the elements of preference, to-wit:

That at the time of the substitution of the bills of lading, and previous thereto, Steele, Miller & Company, and the individual members thereof, were insolvent.

That the substitution of port bills of lading for through bills of lading, or the addition of the new securities for the old securities, was made at a time when Steele, Miller & Company were insolvent.

That knowledge of the insolvency had been brought directly to the defendants.

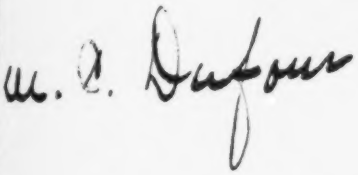
That the circumstances attending the transaction were such as to cause any reasonable man to believe that a preference was intended; that Steele, Miller & Company had forwarded these bills of lading because of persistent demand on the part of Scheuch & Company, made in the name of the banks and the fear and belief of Steele, Miller & Company that they would be exposed.

That there was in reality a substitution or addition to the securities; and that by these acts of Steele, Miller & Company the defendant banks have and will have re-

ceived a greater proportion of their debt than other creditors.

This decree should be reversed, and we so ask.

Respectfully submitted,



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Office Supreme Court, U.
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Supreme Court of the United States,

OCTOBER TERM, 1914.

No. 226.

J. A. E. PYLE, Trustee in Bankruptcy of Steele, Miller & Company,

Appellant,

vs.

THE TEXAS TRANSPORT & TERMINAL COMPANY, COMPAGNIE GENERALE TRANSATLANTIQUE, and BANK DE MULHOUSE.

Appeal from the United States Circuit Court of Appeals for the Fifth Circuit.

BRIEF FOR APPELLEES

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Supreme Court of the United States,

OCTOBER TERM, 1914.

J. A. E. PYLE, Trustee in Bankruptcy of Steele, Miller & Company, Appellant, *vs.* THE TEXAS TRANSPORT & TERMINAL COMPANY, COMPAGNIE GENERALE TRANSATLANTIQUE, and BANK DE MULHOUSE.	No. 226.
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J. A. E. PYLE, Trustee in Bankruptcy of Steele, Miller & Company, Appellant, *vs.* THE TEXAS TRANSPORT & TERMINAL COMPANY, COMPAGNIE GENERALE TRANSATLANTIQUE, and PAUL CHARDIN.	No. 228.

J. A. E. PYLE, Trustee in Bankruptcy of Steele, Miller & Company, Appellant, *vs.* THE TEXAS TRANSPORT & TERMINAL COMPANY, COMPAGNIE GENERALE TRANSATLANTIQUE, and SOCIETE GENERALE.	No. 229.
J. A. E. PYLE, Trustee in Bankruptcy of Steele, Miller & Company, Appellant, *vs.* THE TEXAS TRANSPORT & TERMINAL COMPANY, COMPAGNIE GENERALE TRANSATLANTIQUE, and CREDIT HAVRAIS.	No. 230.

APPEALS FROM THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIFTH CIRCUIT.

BRIEF FOR APPELLEES.

I.

General Statement of the Case.

The above-entitled five appeals were tried, argued and decided together both in the District Court and in the Court of Appeals. They present the same general questions of law and of fact. The evidence is the same in each case; that is to say, evidence taken in one case was by stipulation deemed to be taken in all the other cases, and has been included in only one of the transcripts

of record, that of cause No. 226. The cases illustrate and explain each other, so that they may be more conveniently discussed and more readily understood when presented and considered together. We shall, therefore, cover all the cases in this one brief and argument, to be filed in No. 226, and shall file simply a memorandum brief in each of the other four appeals.

The object of each suit is to set aside an alleged voidable transfer of cotton on statutory grounds, namely, that the transferer intended to give a preference and that the transferee, at the time of the transfer, had reasonable ground to believe that a preference was so intended. The complainant in each case, appellant here, is J. A. E. Pyle, trustee of the bankrupt firm of Steele, Miller and Company. Each case has three defendants in common, the Texas Transport and Terminal Company, Compagnie Generale Transatlantique, and Scheuch and Company. These defendants are not now important as parties to the litigation. The two first named have at present a merely nominal interest in the controversy; Scheuch and Company were not served with process and filed no pleadings, and complainant made no attempt to bring them within the jurisdiction of the Court. The main and distinguishing defendant in each case is a French bank or banker, the beneficiary of the alleged preferential transfer. In No. 226 it is the Bank of Mulhouse, in No. 227 the Comptoir d'Escompte de Mulhouse, in No. 228 Paul Chardin, in No. 229 the Societe Generale, and in No. 230 the Credit Havrais. Of these main defendants Paul Chardin is a private banker at Paris and a cotton buyer at Havre, and the other four are engaged in the banking business at Havre.

The transfers of cotton sought to be set aside are those alleged to be involved in shipments of cotton appropriated by Steele, Miller and Company to forged bills of lading which were attached to invoice drafts representing the value of cotton described therein, drawn on the banks and paid for by them. The particular transactions complained of were the last of a long course of similar transactions, all kept from the knowledge of the banks by deceptive and fraudulent devices. The banks were at all times, up to the institution of the proceedings in bankruptcy claiming the cotton, ignorant of the alleged transfers or of any reason therefor, and of the frauds which the shipments in question were intended to conceal. Until informed by the proceedings charging them with knowingly being the beneficiaries of a preference, they did not know that they had been the victims of a fraud. Before it was known that Steele, Miller and Company were in financial difficulties, the cotton in question had been delivered to the ocean carrier at New Orleans and negotiable bills of lading therefor were on their way to Havre. Sometime prior to delivery to the ocean carrier each lot of cotton had been acquired by Steele, Miller and Company, assembled at interior points, and identified by lot numbers, marks and in every other way with the cotton described in the forged bill of lading to which it was intended to be appropriated, and had been started on its way to Havre by delivery to the inland carrier. All this was in fulfilment of the intention which Steele, Miller and Company had when they forwarded the forged bills of lading with invoice drafts attached, and was in accordance with what had become their established course of business, involving many pre-

vious shipments covering thousands of bales of cotton, all, of course, without the knowledge of the banks.

An understanding of the business dealings and relations of Steele, Miller and Company, Scheuch and Company and the French banks, the principal *dramatis personae,* is necessary to an understanding of the questions of law and fact involved in the present suits. In order not to interrupt the narrative, we state now the difference between "port" and "custody" bills of lading. A "port" bill of lading is issued by the steamship company when the vessel named in the bill of lading is already in port. A "custody" bill of lading is issued when the cotton is received before the arrival of the vessel upon which it is to be loaded. The distinction between the two kinds of bills of lading is of no importance in the present litigation. We make the explanation because the two terms are found in the record.

Steele, Miller and Company was a firm of American cotton exporters. Scheuch and Company was a firm of merchant importers of cotton at Havre, who numbered among their American customers the firm of Steele, Miller and Company. Their business with Steele, Miller and Company was handled in two ways. That firm would sell cotton direct to Havre merchants. The drafts therefor would be drawn direct on such merchants or on banks designated by them. In such transactions Scheuch and Company acted simply as selling agents, and were therefore agents only of Steele, Miller and Company. This was the case of Paul Chardin. In the summer of 1909 Steele, Miller and Company arranged to do business with Scheuch and Company for the seasons of 1909-10 on a consignment basis, i. e., to send cotton to Havre to be sold

by Scheuch and Company. This involved that Scheuch and Company should arrange in their own name and on their credit the necessary reimbursement credits with certain banks. It involved that Steele, Miller and Company should draw drafts on the banks designated by Scheuch and Company, with bills of lading attached, for the value of the cotton. In this way the Havre banks were brought in. They agreed with Scheuch and Company to accept invoice drafts against specific cotton with bills of lading annexed, their engagement being limited to so many bales to be drawn against them outstanding at any one time.

Scheuch and Company were known at Havre as merchant importers of cotton. They dealt in spot cotton on their own account. The Havre banks knew and dealt with Scheuch and Company only as merchant importers. They knew nothing of the particular arrangements between Scheuch and Company and Steele, Miller and Company. They knew Steele, Miller and Company only as American exporters of cotton, one of Scheuch and Company's customers, whose documentary drafts they were to accept as long as the outstanding drafts were within the agreed limits. They understood that in this way they were advancing the purchase price for account of Scheuch and Company. Steele, Miller and Company were informed by Scheuch and Company as to their arrangements with the different banks so that they knew upon what banks to draw when making a shipment. When the cotton arrived the bank drawn against itself made the necessary custom house entries, received the cotton from the carrier, warehoused it in its own name, and released it only when the cotton was sold by Scheuch and Com-

pany and the money, to the amount of the draft, was paid over.

If Steele, Miller and Company had acted honestly the banks would have been in possession of the cotton continuously from the time of the acceptance of the draft representing its value to the time of the payment to them of the amount of the draft. By drawing the draft and attaching thereto the bill of lading and the invoice (to which the draft corresponded in amount), the cotton being described by lot numbers and marks in the draft and in the accompanying documents, Steele, Miller and Company thereby transferred to the drawee bank a special property or ownership in the cotton to the amount of the draft and represented that they had simultaneously, through the attached documents, transferred both the title to and possession of the property, conditioned, of course, on the acceptance of the drafts. The bank accepted this transfer in accepting the drafts and thenceforward had a right to consider itself as having the legal title to as well as the possession of the cotton described in the drafts. Its rights, to the amount of the draft, are the same as if it had purchased the cotton.

Steele, Miller and Company did not conduct their business in an honest way. For some time prior to the present litigation they drew and forwarded their drafts either before they had acquired the cotton drawn against or, at any rate, without shipping any cotton at the time. They forged the bills of lading attached to the drafts. But they would always make good their default by subsequently shipping the cotton described in the drafts and the bogus bills. They employed two different methods. Sometimes they would send the cotton forward on

through railroad bills of lading and, suppressing these genuine bills, allow the cotton to be demanded and received on the fraudulent bills, and at times they would ship the cotton to New Orleans, surrender the railroad bills of lading, and send the cotton forward under port or custody bills of lading issued by the steamship company. These custody or port bills of lading would be forwarded to Scheuch and Company for delivery to the banks, with the request to have the original bills of lading returned.

When the first request was made on the banks for a substitution of port or custody bills for the inland bills of lading, misleading and plausible explanations were given as to the apparent duplication of bills of lading; for instance, that they were necessary to prevent delay and facilitate the movement at the port of New Orleans, that an indemnity bond had been given to the Steamship Company, etc. These deceptive statements were intended to allay suspicion and completely accomplished their purpose. The confidence of the banks in the explanation given received ample confirmation from the fact that in repeated instances, as far back as December, 1909, nothing fraudulent or irregular had developed in the case of shipments in which two similar sets of bills of lading had been received. Depositions of Scheuch, pp. 354-6, of Lyzell, p. 588, of Dubois, 678-680, of Linde, p. 203.

In this way the fraudulent practices of Steele, Miller and Company were concealed from the banks. They always firmly believed that the bills of lading attached to the drafts were genuine and represented cotton shipped at the time, and that the custody bills of lading did not represent cotton subsequently acquired or shipped but

represented the same cotton as did the original bills. When, therefore, they accepted the custody bills and complied with the request to return the other bills, they did not know or suspect that the transaction involved a substitution of good bills for bad, of valuable for worthless documents. This went on for some time and thousands of bales of cotton were shipped and received, so that it became the regular course of business for Steele, Miller and Company thus to perform its obligations to the drawees of its drafts.

The cotton involved in these suits are certain lots of cotton which, following the usual course of business of the parties above described, were on their way to Havre. Each lot had been acquired, assembled at an interior point, segregated, identified by lot number and marks with the invoice drafts drawn against them and paid by one or another of the banks, and, after being thus appropriated, had been forwarded to New Orleans, delivered to the ocean carrier, negotiable bills of lading obtained therefor and forwarded to the proper bank, when a sudden and unexpected mischance caused Steele, Miller and Company to suspend payment on April 29, 1910, and to become bankrupt on May 4th. Subsequent investigation disclosed their fraudulent practices. Then the receiver in bankruptcy on May 7, 1910, finding the cotton on board a vessel of the Compagnie Generale Transatlantique, the Steamship Texas, which had not yet sailed, arrested its departure by injunctive order of the Court. These proceedings were followed some time after, namely, on August 18, 1910, by suits of the trustee charging a voidable transfer. The acts relied on as constituting the alleged voidable preference involved no departure from

the usual methods of delivering cotton drawn against. Steele, Miller and Company had drawn the usual invoice drafts against the specific cotton and attached thereto forged bills of lading. The banks had accepted the drafts and received the bills of lading under the belief that the bills of lading were genuine, represented cotton actually shipped at the time, and gave them title to and possession of the cotton. This was the same belief that they had entertained in respect to numerous previous shipments, and under this belief they remained until the news reached them on May 8th of the arrest of the cotton on the "Texas" the day before under the orders of the court below, at the instance of the receiver in bankruptcy of Steele, Miller and Company. After drawing the drafts covering the cotton in suit Steele, Miller and Company proceeded to fulfill their obligations, as they had been accustomed to do, by appropriating cotton to the drafts, shipping it to New Orleans for transportation thence to Havre, and forwarding custody bills of lading therefor to be delivered to the banks. Unforeseen circumstances, however, having forced Steele, Miller and Company, as above stated, to suspend payment on April 29th and to go into involuntary bankruptcy on May 4th, the receiver of the bankruptcy, finding this cotton on board the "Texas" on May 7th, enjoined its removal from the jurisdiction of the lower court. As Steele, Miller and Company had already parted with the title to as well as the possession of the cotton, the present suits were brought on the charge that the transfer of the cotton constituted a voidable transfer.

Disregarding the ocean carrier and its agent the defendants in each suit are Scheuch and Company and a

particular bank. The transfer attacked is that alleged to have resulted from the shipment of the cotton at New Orleans and the forwarding of the custody bills of lading therefor. It is alleged in one part of the bill of complaint that the object and effect of the alleged transfer was to give a preference to the particular defendant bank and in another part that the object and effect was to make a preferential transfer to Scheuch and Company or to the bank or to both of them. It is charged that both Scheuch and Company and the bank knew or ought to have known at the time that a preference was thereby given and intended. In the pleadings and in argument the alleged voidable transfer is described as a substitution or exchange of good bills of lading for bad. But what is meant is the forwarding and delivery of cotton which did not move at the date of the drafts and the bills of lading attached thereto but subsequently.

The allegations in the different suits vary only as to the number and marks of the bales of cotton, the value thereof, the dates of the different shipping documents connected therewith, the dates and amounts of the drafts, the dates when Steele, Miller and Company appropriated the different lots of cotton to their obligation to deliver the same, the dates when the same were started from the different interior points on the way to those who had paid for them and were entitled to receive them, and the dates when they were delivered to the last carrier, the steamship company. Paul Chardin, however, differs from the four Havre banks in this respect, namely, that he was engaged in the mercantile business and the cotton claimed by him was purchased for his use. The following details respecting each case have been either admitted or established by uncontradicted testimony.

The 900 bales of cotton of the Bank of Mulhouse were appropriated, in the manner above described, by Steele, Miller and Company in discharge of their obligation to that bank on or before April 6th, when it is alleged it was ready to begin its journey to Havre via New Orleans. Delivery orders, i. e. orders directing delivery to steamship, covering 300 bales, bear date April 11th, those covering 300 bales more are dated April 13th, and those covering the remaining 300 are dated April 23rd. The dates of the ocean bills of lading are, one April 19th, two April 20th, one April 22nd, five April 25th.

The corresponding dates in respect to the other banks are as follows:

Comptoir d'Escompte de Mulhouse. Date of appropriation on or before April 6th. Date of delivery orders April 13th and of ocean bills of lading April 25th.

Paul Chardin. Date of appropriation on or before April 6th, of delivery orders April 16th and April 18th, and of ocean bills of lading, one April 19th, two April 20th, four April 21st, one April 23rd, and two April 25th.

Societe Generale. Date of appropriation on or before March 23rd, of delivery orders April 13th, and of ocean bills of lading April 15th.

Credit Havrais. Date of appropriation on or before April 6th, date of delivery orders April 15th, and date of ocean bill of lading April 23rd.

By "appropriation" is meant the acts of Steele, Miller & Company set forth in paragraph 7 of the bill of complaint in each case, namely, acquiring and assembling the different lots of cotton, segregating and marking them to correspond with the cotton described in the different forged bills of lading, and starting them on

their journey to Havre in fulfilment of the undertaking created by the forged bills of lading and the attached drafts, etc. Those acts Mr. Linde, a member of the firm of Steele, Miller and Company, produced as a witness by the trustee, declared were done in accordance with the intention which his firm had when they drew the drafts and constituted its customary mode of fulfilling its obligations in the premises. Deposition of Linde, pp. 197-6, 206, 215.

The Court of Appeals, from which these cases come to this Court, was of the opinion that the allegations and proof just referred to established the state of facts which that court had recently decided in *Lovell* v. *Newman,* 192 Fed., 753, and *Hentz & Co.* v. *Lovell, Id.* 762, to constitute an appropriation, operating to transfer the title to the cotton to the banks as holders of the original (forged) bills of lading, who had accepted and paid the invoice drafts attached thereto. If, as we shall contend, this be a correct application of the doctrine of appropriation, it practically disposes of the charge that the bankrupts intended a preference and that the banks knew that a preference was intended. It does this by placing the acts which originated or effected the so-called transfers attacked at a date long prior to the circumstances relied on to create a suspicion of unlawful intention or guilty knowledge.

We undertake to show, however, irrespective of the doctrine of appropriation, that the evidence fails to show the essentials of a voidable transfer.

The object of the suits being to avoid an alleged preferential transfer, it is essential for the trustee to establish that the transfer constituted a preference, that

the property transferred was such as the creditors had a right to subject to their claims, that the transferer intended a preference, and that, at the time of the transfer, the transferee had reasonable cause to believe that the transferer so intended. The defense available to the banks is the failure of the trustee to establish the existence of any one of the foregoing essentials. They specially rely upon the absence of reasonable cause to believe and the absence of intention to prefer.

The defense of the banks which it seems to us must prevail, even if every other defense fails, is that until May 8th, when information of the proceedings taken on May 7th reached them, they were entirely ignorant of the alleged transfer. They did not know that the original bills of lading were forged. They believed them to be genuine and that the cotton called for by them had been shipped at the date of the bills, that they had ever since the acceptance of the drafts been in the secure constructive possession thereof, and therefore that no subsequent transfer of the cotton was necessary or possible. Believing that their bills of lading were genuine, they could not have known of any substitution or exchange of good bills for bad. As a matter of fact, no substitution or exchange of any kind took place. For reasons explained hereafter the banks retained both sets. Now the banks could not have believed that a preference was intended when they were unaware of the transfer which caused the preference. Knowledge of insolvency would not create any belief as to an unknown transfer. With the information and belief which the banks had, they could not reasonably have failed to believe that they were exclusively entitled to the cotton. Several cases are cited later which

hold that ignorance of a transfer which actually constituted a preference and was so intended, is a sufficient defense to a suit to avoid the transfer.

We believe that the defense of want of knowledge of the facts essential to the banks having any belief at all as to the alleged preferential transfer is an insuperable bar to the trustee's recovery. So far as it depends upon facts, it is supported by the uncontradicted testimony of all of defendants' witnesses. It is corroborated throughout by the testimony of Mr. Linde, a member of the bankrupt firm and complainant's main witness. He would certainly know if the banks' plea of ignorance were not true.

The main reliance of the trustee to overcome the defense under discussion is the existence of the two sets of bills of lading. The trustee cannot win unless he succeeds in convincing the Court that the existence of the duplicating bills of lading, under the circumstances, is equivalent to proof of the necessary guilty knowledge on the part of the banks. Under the appropriate heading of this brief, we shall fully discuss this branch of the case. We desire now, as a part of the general statement, to give the Court a synopsis in anticipation of the more extended argument to follow. Before doing so, we call attention to the following:

If, under the doctrine of appropriation, the title or right of the banks to the cotton is to be considered as dating from the time when the cotton was acquired, assembled, marked, etc., then the custody bills of lading cut no figure in the case. The transfer took place prior to and independent of those documents. If, under the doctrine of appropriation, the banks' rights to the cotton

arose when the cotton was actually delivered to the ocean carrier for transportation to Havre, then again it antedates any knowledge by the banks of the existence of two sets of bills of lading and is independent of the custody bills of ladings. The same is true if it be held that Steele, Miller and Company parted with the title to the cotton when the same was delivered to the ocean carrier or when the endorsed bills of lading were deposited in the mail.

We now recur to the question of the belief or knowledge of the banks derivable from the sight of custody bills purporting to represent the same cotton as the bills attached to the drafts. As to what was their actual belief or knowledge, this is a question of fact. The representatives of the banks say they believed the plausible explanations received on a similar occasion in the past, and therefore believed that the custody bills represented the same cotton as the original bills. For the Court to find the opposite of their testimony to be true would be to disregard all the evidence on the subject in order to reach the absurd and improbable conclusion, that the banks made inquiries for the purpose of being deceived and, knowingly and without reason, conducted business for months with a firm of swindlers, accepting drafts representing the value of thousands of bales of cotton with bills of lading known to be bogus attached. The question is whether the explanations given were so transparently false that no sensible man should have been misled thereby. It is a sufficient answer to say that four men of presumably more than usual intelligence, acting independently and when it was to their interest not to be deceived, were in fact deceived. Moreover, one witness, produced by the trustee, and vouched for as an expert

on the subject, Mr. Breton, the only witness to whom the explanations were disclosed, declared he would have acted as did the banks (pp. 131 ffg). Whether the banks were wilfully or purposely blind in ever believing such explanations is to be determined by the conditions existing when the explanations were received and credited. At that time it was to the interest of the banks to know the truth. That their confidence should have continued up to the date of the bills of lading covering the "Texas" cotton is natural; the explanations had been made more plausible and more worthy of belief by repeated arrival and receipt of cotton covered by the so-called duplicating bills of lading without development of any irregularities or suspicion of wrong.

But despite all this it is said that the arrival of the custody bills of lading did affect the bank with guilty knowledge. Here again the contention of the trustee can be sustained only by considering as false all the positive testimony on the subject or by declaring that the managing directors of the greatest banks in the world are men of less than ordinary intelligence. The main, if not the only, ground upon which the trustee asks the Court to so decide and to hold that, despite previous belief strengthened by previous experience, the presentation of the custody bills in the case of the "Texas" was equivalent to all the knowledge necessary for a belief that an unfair preference was intended, is the failure of Knight, Yancey and Company a few days before and the disclosures of their fraudulent practices. Just exactly how long it took for those disclosures to be definitely known, how much the defendant banks knew, and what the fraudulent practices were, is not disclosed by the

record. *It is not shown, however, that they ever employed the device of exchanging custody bills of lading.* It cannot be claimed that the arrival of the custody bills gave the bank any knowledge or notice of any facts. The very most that the trustee can ask the Court to find is that the defendant banks should have suspected some irregularity. And, as evidence that they did suspect something, the trustee calls attention to the failure of the banks in the case of the "Texas" cotton to return the original bills when receiving the custody bills. But this is explained and shown not to be because they knew or suspected that their original bills were worthless, but because they feared that the Compagnie Generale, in view of the Knight-Yancey disclosures, might not be willing to continue to deliver the cotton without the production of the original through railroad bills of lading (pp. 594, 713-715).

The case then reduces itself to this: The banks did not suspect anything as a matter of fact, and very good reasons exist why their suspicions were not aroused. The trustee adduces reasons why he thinks the banks should have been suspicious. We do not think his reasons are sufficient; the most that can be claimed for them is that they should have occasioned a vague suspicion. But the settled law is, that mere grounds of suspicion do not amount to the actual or constructive knowledge required to make out a case of a voidable preference.

In view of the failure of the trustee to prove that the defendant banks ever even constructively knew of the transfer attacked, it is impossible for him to recover. A decision against defendants having as its necessary and sole basis on the most essential part of the case a vague

suspicion, not actual but dependent upon a hardly justifiable imputation, would be unprecedented in the bankruptcy jurisprudence of this country.

The charge of knowledge of insolvency does not affect the defense that the alleged transfer was made without the procurance or knowledge of the banks. The belief of the banks that the original bills of lading were genuine and that the cotton was the cotton drawn against, to which they were exclusively entitled, would not be affected by news received on April 29th of Steele, Miller and Company's financial embarrassment. Nor would knowledge of insolvency create any belief as to an unknown transfer. It requires no authority to support the proposition that knowledge of insolvency is not necessarily the equivalent of knowledge that a preference is being received.

When a person knows that he is receiving a *dation en paiement* or a transfer of assets or a mortgage to discharge or secure an antecedent unsecured indebtedness, his knowledge of the debtor's insolvency would be equivalent to knowledge of intention to prefer, and notice of facts indicating insolvency would be equivalent to actual knowledge. But when a person does not know that he is receiving a *dation en paiement* or a present transfer of assets, but is either ignorant of any transfer or believes that he is receiving what he had title to and was in constructive possession of and was exclusively entitled to prior to the insolvency, then knowledge of insolvency at the time the property came into his actual physical possession cuts no figure. The representatives of the defendant banks have been able, under the peculiar facts of the case, to testify to the fact that knowledge of the

insolvency of Steele, Miller & Company could not have affected the belief of each bank that it was receiving cotton shipped at the dates of the drafts and to which it alone was entitled to (pp. 507, 594, 686-7, 745-6, 803).

Not only has the complainant failed to establish the essential element of guilty knowledge on the part of the banks, but he has failed to establish another equally essential element of his case, namely, intent to prefer on the part of Steele, Miller & Company. One cannot have knowledge of an intended preference when no preference was intended. The absence of any intention on the part of Steele, Miller & Company to give the banks a preference is made evident by the testimony of Linde, considered in its entirety, and is a natural conclusion from the undisputed facts in respect to that firm's mode of doing business and the necessity of forwarding cotton to keep the wheel turning. The ruling motive was the belief that, if the Havre banks could be quieted and induced to loosen up for further reimbursement credits, Steele, Miller & Company could continue their business and eventually pull out. Linde's deposition (pp. 218, 242).

Under a separate heading of this brief we shall refer to the case of *The Idaho,* 93 U. S., 575, as construed and applied by the Circuit Court of Appeals in *Lovell* v. *Newman,* 192 Fed., 753. The principle of appropriation there announced is applicable to the present controversy, the undisputed facts of which make out the strongest sort of case of appropriation. The doctrine of transfer by appropriation is not confined to sales, but extends to any case involving a transfer or delivery of property for the purpose of creating some right *in rem;* but, be

that as it may, it is well settled law that a draft drawn on a bank with bill of lading attached, under the conceded circumstances of this case, operates as a transfer by the drawer to the accepting drawee of a special property in the goods equal to the amount of the draft, and gives the bank the rights of a purchaser, so that its rights are to be worked out as if the case were one of purchase or sale. It goes without saying that the law of appropriation is applicable to a case of alleged voidable transfer, not for the purpose of sustaining a transfer which has the elements of a voidable preference, but for the purpose of determining when the transfer of title took place, so that it may be determined whether at that time the transferee had reasonable cause for belief that he was receiving an intended preference. Under the law of appropriation, as we understand it, the transfer took place, in the case of the Societie Generale, prior to March 23rd, and in the case of the other defendants, prior to April 6th. But, if we are mistaken, then it certainly took place on the delivery of the cotton to the ocean carrier for transportation to Havre for delivery to the defendant banks. This delivery took place in the case of the Societe Generale on April 15th, and in the case of the other banks at various subsequent dates, the latest being April 25th. Now, neither on March 23rd nor on April 6th, nor on April 15th, nor on April 25th, did there exist any grounds whatever for imputing to the banks any sort of guilty knowledge. Hence the doctrine of appropriation is fatal to the trustee's case, not because it can possibly have the effect of justifying a voidable transfer, but because it has the effect of making the transfer take place at a time not suspicious, at a time when it would be hopeless for

the trustee to charge the banks with them having reasonable ground for believing that a preference was being given and received.

We shall devote a special heading in the brief to Paul Chardin and show that, as to the defense of want of reasonable cause for belief, etc., his case is on all fours with the Havre banks, and that as to the defense based on the doctrine of appropriation, his case is at least equally strong as that of the Havre banks, and, according to the views of the trustee's counsel, stronger, because he was an actual purchaser for his own use of the cotton covered by his drafts. The facts peculiar to his case will be discussed in detail.

There is also available to the defendant banks the defense of estoppel, which has been specially pleaded. It will be discussed in its appropriate place in the argument. We do not claim that estoppel applies to the acts of bankruptcy which constitute the alleged voidable preference. But it does apply to the acts which may have misled the creditor as to the nature of his rights or of the situation of the property. It certainly can be urged in respect to acts which precede the alleged voidable transfer and affect the original transaction and the rights and obligations arising therefrom. It may therefore be claimed in this case that the trustee is estopped, as would be the bankrupts, from denying the genuineness of the original bills of lading or from denying that the cotton was shipped at the time the bankrupts misled the banks into believing it was shipped.

As to the evidence, it was stipulated that any evidence taken in any of the cases may be considered as taken and offered in all the other cases. On behalf of defendants

the depositions were taken under commission of the managing director of each bank and of the members of the firm of Scheuch and Company. In the search for evidence of intention to prefer on the part of Steele, Miller and Company or of guilty knowledge on the part of the banks, the witnesses were cross-examined most searchingly and were called upon to produce letters, papers, accounts, etc., to such an extent that the documents produced in response to the calls number over one thousand. As the matter searched for did not exist, naturally no evidence of its existence was found. Most of the documents called for were stipulated out of the record in the district court. The number was further reduced in making up the transcript of appeal for the Court of Appeals, and a great deal of what still survived has been eliminated by exclusion from the printed record.

In our view of the case the only material evidence, besides the drafts, bills of lading, invoices, etc., is the testimony of the managing director of each defendant bank, of F. Scheuch and Albert Schilling, of C. H. G. Linde, a member of the firm of Steele, Miller and Company, and of J. D. Hardin, Jr., who represented the firm at New Orleans. There is surprisingly little conflict or room for conflict over the essential facts of the case. The facts upon which the doctrine of appropriation is invoked by defendants are alleged by complainant in his bill. The dates we rely on in respect to the movement of the cotton are furnished by complainants' witness, J. D. Hardin, Jr. The ignorance of the banks which negative the existence of guilty knowledge is established, without conflict, by the testimony of the banks' representatives, and complainant's witness Linde

confirms the truth of their statements. The absence of any intention on the part of Steele, Miller and Company to give the banks preference is made evident by the testimony of Linde and is a natural conclusion from the established facts in respect to their mode of doing business and the necessity of forwarding cotton to keep the wheel turning.

We do not attach any importance to the testimony of the several local bankers and the steamship agents adduced by the trustee to show that the occurrence of two sets of bills of lading should have excited the suspicion of the Havre banks. The knowledge and experience of the foreign banks was very different from that of the local expert. Whatever force their opinions might otherwise have is destroyed by the fact that, with one exception, they were not placed in the position of the Havre banker by being told of the explanations and occurrences having for their object and effect to allay suspicion. In the exceptional case, when Mr. Breton was informed of the explanations made to the banker, he declared that his belief and conduct would have been the same as that of the defendant banks (pp. 131-133).

We shall not attempt in the discussion of the evidence which next follows to summarize or refer to all the evidence. We shall confine ourselves to the evidence which, in our opinion, establishes the good faith of the banks and the absence of reasonable ground for belief on their part that they were receiving an intended preference.

II.

Discussion of the Evidence Showing Good Faith of the Banks and Absence of Reasonable Cause for Believing that a Preference was Intended or Received.

This branch of appellees' case finds ample support in the depositions of Paul Lysell, managing director of the Bank of Mulhouse, Elisée Paul Dubois, managing director of the Société Generale, Emile Level, managing director of the Comptoir d'Escompte de Mulhouse, Jules Castel, managing director of the Credit Havrais, and Alphonse Riss, representative of Paul Chardin. It will be impossible for the Court to read these depositions without being convinced of the entire good faith of the banks, and of *their complete ignorance of the facts which are relied upon to show that a preference was intended or was actually given.* We direct special attention to the depositions of Mr. Lysell and of Mr. Dubois. We shall quote mainly from the testimony of those witnesses because they cover the facts more fully.

Unless otherwise stated the evidence quoted applies to all five cases. The allegations in the different suits differ only as to the number and marks of the bales of cotton, the dates and amounts of the drafts representing the value thereof, the dates, etc., of the false bills of lading, and the dates when Steele, Miller and Company appropriated the different lots of cotton to their obligation to deliver the same, and the dates, etc., of the bills of lading representing the cotton when it was first started on its way to those who had paid for it and were entitled to receive it and when it was delivered to

the last carrier, the steamship company. Paul Chardin, however, stands on a different footing in this respect, namely, that he was engaged in the mercantile business and the cotton claimed by him was purchased for his use. His case, so far as it is affected by the facts peculiar to it, will be separately discussed.

In answer to the fourth interrogatory Mr. Lysell said that the Bank of Mulhouse opened its branch office at Havre on August 17, 1909.

> "With regard to the credits for reimbursement against documentary drafts, we allow Havre cotton importers to let their American customers draw drafts on the Banque de Mulhouse for the amount of the cotton value, (less freight, insurance, 6% loss in weight), which we accept for the account of our clients against delivery into our possession of a bill of lading which represents the cotton and which is annexed to the draft with other documents, most usually insurance certificates and invoices" (p. 574).

In answer to the same interrogatory Mr. Dubois states that the Société Generale opened its branch at Havre in 1869; that since then a part of its business has consisted in opening of merchandise credits to accommodate Havre merchants; that these credits opened to facilitate importations are strictly against drawings of documentary drafts at 60 or 90 days sight on the Société Generale, which drafts are accepted only when all documents are in order and in the bank's possession. The documents consist of bills of lading, insurance policy, invoices, etc.; "these are attached to the drafts and *confer the full property of said merchandise (cotton, coffee, wool,*

leather, wood, corn, cocoa, etc.), to the Société Generale'' (p. 663).

The bank never makes any uncovered advances on importations; it does not, on principle, accept any draft referring to an importation which is not fully covered by the goods and accompanied by a full set of documents (p. 664).

All of the witnesses testify in high terms of the business integrity, financial responsibility, solvency, good reputation, etc., Scheuch and Company, who were merchants at Havre, engaged among other things in importing cotton.

Interrogatory eight called for a statement of the business arrangements or dealings of each bank with Scheuch and Company. To this interrogatory Mr. Lysell replied:

> "The business arrangements we have had with Scheuch and Company are similar to those which we have had with the other firms on the Havre market. That is to say, we give a credit of reimbursement for a certain number of bales, the same credit being realized by documentary drafts (bills of lading, insurance certificates, and invoices); in consequence the documents (bills of lading, insurance certificates, invoices), were delivered to us against our acceptance of the draft to which they were attached. Besides this, to guarantee ourselves against the fluctuations of the market, we invariably required that those cottons should be covered with a sale of futures in our name registered at the *'Caisse de Liquidation'* du Havre.
>
> "When the goods arrived, we claim them from the consignees of the steamer; we fulfilled ourselves the customhouse formalities, and we stored the goods in our name in the public storehouse authorized by the State, as a security in exchange

of our acceptance of the draft, in order to be able, when due, to pay it, and, in that way, to consent to a prolonged advance by debit in the account current of *Scheuch and Company* of the amount of the paid draft.

"Now supposing that a lot of cotton, (by example 100 bales, part of the goods against which we have accepted documentary drafts) was sold by *Scheuch and Company*, we only gave to that firm an order of delivery of 100 bales, against a money payment of the actual value of the cotton and against a contract of re-purchase of futures at the *'Caisse de Liquidation'* du Havre. In this way there was no necessity for us to know to whom and in which conditions the sale was carried out" (p. 576).

To the same interrogatory, Mr. Dubois replied:

"As I have mentioned (answer 5) we entered into business relations with M.M. Scheuch & Co., in July, 1906, and we opened credits for their importations, the same as we do for other merchants in Havre as I have described in answer 4.

"Against documents (bills of lading, insurance policy, and invoice), for X bales of cotton marked so and so, we accepted drafts on us at sixty or ninety days sight drawn by the American exporters for the full value of the cotton mentioned. Messrs. Scheuch & Co., paid us 5% on the amount of the drafts to cover us against out of pocket expenses such as warehousing, insurance, differences in weight and quality, which might occur.

"On arrival of the steamers we presented ourselves to the steamers' officers or to the agents representing the steamship company as claimants to the cotton and further obtained the permission from the customhouse officers to enter the goods. We then had them warehoused in our name, as a surety

for our acceptances. When Messrs. Scheuch and Co. sold the cotton they paid us over the money and after that we instructed the warehouse to hold the goods at their disposal. This proves that we were not uncovered at any time, because we give our acceptance only in exchange for full title deeds on the property; with these documents we received the cotton when it was unloaded, and had same warehoused in our name and we do not part with the documents until we are paid by Scheuch and Company.

"Further, we were guaranteed against a loss which might occur by a fall in the price of cotton by Messrs. Scheuch and Company, having future sales contracts booked *in our name* at the Clearing House, for an equal amount of bales as had been imported with our assistance. Of course, as our clients did not speculate they always bought back future cotton in our name to the exact amount of cotton which they sold for spot delivery. All big cotton houses have the same way of working; they sell future cotton to the same amount as they have imported, (in this way they minimize their risk against a fall), then when they sell part of the cotton which they hold, directly they cover same by buying the same amount on a future delivery, in this way they guard themselves against a loss on their imported cotton which might occur through a fall in the price.

"Every firm working on other lines would run grave risks and Messrs. Scheuch and Company were always desirous to evade these dangers, they never speculated in any way and we have always been pleased to encourage this way of working" (pp. 666-7).

We ask the Court to read in this connection Mr. Dubois' answer to interrogatory fifth (p. 664).

Interrogatory ninth asked the witnesses to state

whether or not the bank's arrangement with Scheuch and Company provided that drafts drawn should always be accompanied by documents which would give the bank title to the cotton described in the draft, and whether or not the bank would have authorized the drawing of any draft or would have accepted any draft if it had not believed that on acceptance it acquired title to and possession and control of the cotton described in the drafts.

To this Mr. Lysell replied:

"The credit we had opened to Scheuch and Company was a credit of reimbursement, to be realized by documentary drafts to be drawn on us by the American cotton exporters in business relations with Scheuch and Company.

"Therefore the question could never arise for the *Banque de Mulhouse* to accept a draft without any document, and our conviction as European Bankers, is that when you retain in your possession a document appertaining to goods described in the draft you have accepted, you have indisputably sole rights over those goods.

"The *Banque de Mulhouse* has never authorized and still less would have accepted a documentary draft if it had not the firm conviction that the documents which were attached to the draft and which were delivered against its acceptance gave it complete rights over the goods described in the said draft.

"As we have said already, we have always required of the Scheuch and Company firm, in order to protect ourselves against the fluctuations of the market, to deliver into our hands at the same time or before the draft was presented to us, a sale of futures for the same number of bales, registered in

our name at the *Caisse de Liquidation* du Havre. The futures were invariably sold at the Havre Exchange through official brokers and registered in our name at the *Caisse de Liquidation* du Havre. In that way we were absolutely safe from any fluctuation in the market, for we had before us a purchase of available goods and a sale of futures to cover us. The market could go as it liked we were perfectly indifferent, for we were covered against any fluctuation" (p. 577).

To this question Mr. Dubois replied:

"Our arrangements made with Scheuch and Company were that we would not accept American drafts drawn on the Societe Generale for their account, unless they were accompanied by full set of documents treated in Number 8. And generally we took the precaution to demand the two negotiable copies of the bill of lading and of the insurance policy before giving our acceptance. In this way, we were certain that the exporters could not make use of the duplicate documents and fraudulently create new drafts for the same cotton.

"The Societe Generale was absolutely confident that the drafts accepted under these conditions conveyed to them the full property rights on the cotton described in the drafts and in the documents attached to these drafts, and if the Societe Generale had not had this absolute confidence and conviction, namely that by giving their acceptance they obtained the full right, possession and control of the cotton described in these drafts, they would never have authorized the drawing of the drafts, nor would they have accepted them.

"The future sales and purchases were always executed by Scheuch and Company in our name, through brokers, and booked on the registers of the

> Clearing House. In order to prevent a loss through a fall in the price of cotton we made the stipulation that there would always be the same number of bales sold for future delivery as there were bales in the warehouse in our name and sailing for Havre" (pp. 667-8).

The answer to the tenth interrogatory shows that the banks had no interest in, or knowledge of, the contracts or arrangements of Scheuch and Company with any of their customers, and that the banks never extended or intended to extend any credit to the shippers of cotton.

All the witnesses state in answer to the eleventh interrogatory that they knew Steele, Miller and Company only by name as one of the American firms which exported cotton to Havre, that they did not know any of the individual partners, (except that Mr. Lysell had met Linde on one of the latter's visits to Havre) and that neither they nor the banks had ever had anything to do with the firm except to receive the usual notices of drafts, which according to the custom at Havre are never answered.

To the twelfth interrogatory practically the same answers are given. We quote that of Mr. Dubois:

> "Our business arrangement with Scheuch and Company commenced in July, 1906. At this time the firm of Steele, Miller and Company probably did not exist or was not represented by Scheuch and Company.
>
> "Since then, neither Societie Generale nor myself have ever had any knowledge of the contracts or arrangements entered into between Scheuch and Company and Steele, Miller and Company and in which we have no interest at all.

"As I have said in answer No. 10, our arrangements with Scheuch and Company stipulated a commission of ¼ per cent. per acceptance and a further commission of 5 francs monthly per contract for every 50 bales, which was finally reduced to 3 francs.

"The Societe Generale has never opened any credits in favor of Steele, Miller and Company and has never had the intention to do so." (Pages 669, 670.)

The thirteenth interrogatory called for a statement of the first draft drawn on each bank by Steele, Miller and Company under the bank's arrangement with Scheuch and Company, the date of the last draft, and the total number of bales of cotton during the period named thus covered by such drafts.

In the case of the Bank of Mulhouse the date of the first draft was September 13, 1909, of the last draft, February 14, 1910, and the total bales covered by drafts were 25,100 bales. The bank, moreover, accepted on account of the Cotton Commission Company, with the full guarantee of Scheuch and Company, drafts drawn by Steele, Miller and Company against a total of 3,100 bales, during the period from November 15, 1909, to January 17, 1910 (pages 579, 580).

In the case of the Societe Generale the date of the first draft was November 12, 1907, of the last draft February 24, 1910, and the total number of bales drawn against was 8,500 bales, of which 8,000 was for the years 1909-10 (page 670).

It appears from the answer of Mr. Dubois to the same interrogatory (13th) that of the 8,500 bales covered by the drafts of Steele, Miller and Company, 8,000 were for

the season 1909-10, and 500 were for the year 1907. As stated above, the date of the first draft on the Bank of Mulhouse was September 13, 1909. In his answer to direct interrogatory four, Mr. Scheuch says that Steele, Miller and Company began to do business on a consignment basis only during the season of 1909-10, and during that season only he made his arrangements with the Havre banks for reimbursement credits. Prior to that time there were only a few sporadic cases of consigned cotton (page 342).

We call special attention to the statements in the foregoing paragraph because counsel for the trustee based an argument in the court below on the mistaken belief that on September 1, 1909, Steele, Miller and Company owed these banks some 20,000 bales of cotton.

In the case of the Credit Havrais the drafts covered the period from May 10, 1909, to March 7, 1910, and a total of 17,300 bales (page 795).

In the case of the Comptoir d'Escompte de Mulhouse the drafts covered a period from July 28, 1908, to February 18, 1910, and a total of about 25,000 bales (page 735).

It will be seen from the answers to the Fourteenth Interrogatory that the banks regularly paid the accepted drafts of Steele, Miller and Company when due, and that Steele, Miller and Company fulfilled all their obligations in the premises with the following exceptions:

The Bank of Mulhouse is short 1,250 bales, of which 900 bales are involved in the present suit and 350 bales were a part of the 3,100 bales destined to Bremen for account of the Cotton Commission Company, and may be classed as non-existent. The Societe Generale is short

600 bales, 400 involved in this suit and 200 bales of non-existent cotton. The Credit Havrais is short 450 bales, 100 of which is involved in this suit and 350 is the subject of another controversy with the trustee. The Comptoir d'Escompte de Mulhouse is short 1,000 bales in addition to the 100 bales concerned in this suit (pages 580, 670, 736 and 795).

In answer to the sixteenth interrogatory the witnesses show in detail the facts in respect to the particular cotton in suit, the dates and amounts of the drafts, the character of the accompanying documents, which were delivered with the drafts and have ever since remained in the possession of the banks, the subsequent payment of the drafts, etc. The drafts and accompanying documents are annexed as exhibits.

The seventeenth and eighteenth interrogatories sought to elicit the knowledge and belief of the banks as to the genuineness of the bills of lading, etc., and the reliance placed upon the documents accompanying the drafts. The answers of Mr. Dubois for the Societe Generale, quoted below, may be taken, *mutatis mutandis,* as the answers of all.

To the seventeenth interrogatory he saith:

> "On the 21st of February, the date on which we received the documentary drafts, *re* the four hundred bales, for acceptance, the Societe Generale had not the slightest reason to doubt the genuineness of the bills of lading attached to same, which did not differ at all from all other bills formerly received and through which we had already received more than 5,000 bales of cotton shipped by Steele, Miller and Company. We therefore firmly believed when accepting these drafts that the cotton described

therein had been really shipped and was on its way to Havre, and that the possession of the bills of lading assured us of the full property of the cottons (as described and marked) and the incontestable right to receive same on arrival" (page 674).

To the eighteenth interrogatory he saith:

"It is because of this absolute confidence in the security offered by the bills of lading, the belief in the genuineness of the shipment and the validity of the rights which we had acquired through the transference of the bills of lading and their possession that the Societe Generale has accepted those drafts.

"Without that belief and that conviction the Societe Generale would have refused to accept those drafts, and it would have been easy for them to liquidate at once the account of Scheuch and Company if they had had the smallest suspicion about the validness of the bills of lading.

"After having had 5000 bales of cotton, dispatched to us from Steele, Miller and Company, towards the 15th of September, 1909, we only had 900 bales running on the 16th of February, 1910, which were covered by through bills in our possession, against about Fr. 347,000 drawn by Steele, Miller and Company; these cottons were moreover received by us afterwards at the unloading.

"Then after the 16th of February, we have still accepted drafts of Steele, Miller and Company, for account of Scheuch and Company, against 2,000 bales on the following dates:

18th	February	400	Bales	of	Cotton.
21st	"	1,200	"	"	"
24th	"	400	"	"	"

"If the Societe Generale had not had the absolute confidence of which I have spoken before, they

would not only not have accepted the drafts, *re* the 2,000 bales presented from the 18th to the 24th of February, but would have asked Scheuch and Company to retire the 900 bales sailing against payment of about Fr. 347,000, and Scheuch and Company had at that time enough money to pay the amount we would have asked for.

"This fully proves that the Societe Generale had not the slightest suspicion on the validness of the through bills or the actual situation of Steele, Miller and Company" (p. 675).

In answer to the nineteenth interrogatory the witnesses give the dates when the custody bills of lading were delivered into the actual physical possession of the banks, the custody bills and the note accompanying the delivery thereof being annexed as exhibits. Custody bills representing the 400 bales of the Societe Generale reached that bank April 26th. Those representing 700 bales to the Chardin cotton reached the owner May 3rd. Those representing 300 bales of the cotton of the Bank of Mulhouse were delivered on May 3rd. The remaining custody bills came in to the actual physical possession of those for whom they were intended on May 7th.

Interrogatory twenty covers the crux of the matter when it calls for the knowledge and belief of the banks at the time as to the object and effect of the custody bills. The witnesses state most positively that they firmly believed that the original bills of lading were genuine and represented cotton shipped at the time; that the custody bills of lading represented the same cotton and not cotton subsequently acquired to discharge or make good any default of Steele, Miller and Company.

We copy the answers of Mr. Lysell and Mr. Dubois:

"At the time that the bank received the said custody bills of lading, neither I nor the bank knew that the said bills of lading attached to the drafts were not genuine, and that they were false or had been forged. Neither I nor the bank knew or believed at that time that the said custody bills of lading represented cotton acquired and shipped by *Steele, Miller and Company,* subsequently to the drawing and sending of the said drafts and the said bills of lading accompanying them. The *Banque de Mulhouse* and I believed that the said custody bills represented the same cotton as the through bills attached to the drafts we had already in our possession. Neither I nor the bank knew or was informed at any time prior to the receipt of said custody bills of lading that the custody bills existed and that Steele, Miller and Company intended to procure them and forward them to the bank.

"At the date on which the *Banque de Mulhouse* received the said custody bills of lading neither I nor the bank had any knowledge or information that at some time subsequent to the date of said drafts and the bills of lading which accompanied them, Messrs. Steele, Miller and Company had acquired and put together nine hundred bales of cotton, had caused the same to be marked and numbered to correspond with the numbers and marks described in the said drafts, and had caused the same to be shipped to New Orleans and thence by a steamer of the *Compagnie Generale Transatlantique* to Havre, the same cotton so shipped being represented by the said custody bills of lading" (p. 587).

Mr. Dubois' answer is as follows:

"When we received those custody bills of lading the Societe Generale and myself had no idea that the

through bills attached to the drafts were forged or falsified.

"The Societe Generale and myself had no knowledge that those custody bills of lading represented cotton bought and shipped by Steele, Miller and Company after the issue and posting of the said drafts and through bills, and we thought that the custody bills represented the same cotton as mentioned by those through bills attached to the drafts.

"Before receipt of the custody bills of lading (26th of April) the bank and myself had no knowledge of the creation of same. We never knew that Steele, Miller and Company had intentions to create said custody bills and send them to the bank.

"At the time we received those custody bills neither the bank nor myself had any knowledge that some time after the issue of the drafts and the through bills attached to same, Steele, Miller and Company had bought and put together 400 bales of cotton, which they had marked and numbered so as to correspond with the numbers and marks mentioned in the said drafts and had them sent to New Orleans and from there by a steamship of the Compagnie Generale Transatlantique to Havre, this cotton being represented in the said custody bills.

"The bank and myself only know the alleged facts from the proceedings taken by the trustee for Steele, Miller and Company's failure, and it is impossible for us to verify same" (pp. 677-8).

The answers to the twenty-first interrogatory refer to the receipt of custody bills on previous occasions, the plausible explanations given in respect thereto and the reasons justifying the banks in believing the explanations and in suspecting no fraud or improper practices. Their confidence in the explanations had received am-

ple confirmation from the fact that in repeated instances, as far back as December 9, 1909, nothing fraudulent or irregular had developed in the case of shipments in which two similar sets of bills of lading were received. The foreign banks were naturally not as familiar with the rules and practices of rail and ocean carriers in this country as some local bankers seem to be after the disclosure of the frauds of Knight, Yancey and Company. We shall have occasion hereafter to quote from the testimony on this branch of the case (pp. 588, 678).

In answer to an inquiry in the twenty-second interrogatory as to when the banks learned for the first time that the bills of lading attached to the drafts covering the cotton were forged or claimed to be forged and bogus, the witnesses state the date to be May 8, 1910, when they were informed by Scheuch and Company of the injunction suit in the United States District Court at New Orleans.

In answer to an inquiry in the same interrogatory as to when the banks learned for the first time that the custody bills of lading did not cover, or were claimed not to cover, cotton shipped at the dates of the original bills of lading attached to the drafts, but covered, or were claimed to cover, cotton subsequently acquired and shipped by Steele, Miller and Company, the witnesses declare that such information came to them for the first time on May 8, 1910, through the institution of the above referred to suit. We quote the answer of Mr. Lysell:

> "The bank and myself learned in that way for the first time by the news of that suit, that it was alleged or pretended that the railroad bills of lading attached to the drafts accepted by the *Banque de*

Mulhouse were considered as forged or bogus. The *Banque de Mulhouse* and myself have also learned for the first time in that way that the 900 bales of cotton of which it had paid the total amount when it paid the drafts appertaining to them, could have not been shipped on the dates on which it was believed that they were shipped, that is to say, on the 27th December, 1909, 20th, 21st and 25th January, 1910, shown on the through bills of lading and that the nine custody bills of lading covered or were supposed to cover cotton acquired and shipped subsequently by *Steele, Miller and Company*" (p. 590).

Interrogatory twenty-three calls upon the witnesses to answer the charge that the banks knew or ought to have known at the time of the delivery of the cotton in question to the ocean carrier or at the time of the mailing of the custody bills of lading, or at the time of the latters' arrival that Steele, Miller and Company intended thereby to give the banks a preference. That this charge was very fully met and refuted is shown by the answers. We quote those of Mr. Lysell and Mr. Dubois:

"The *Banque de Mulhouse* had never known, nor suspected, at any date of the following periods that Messrs. *Steele, Miller and Company* had intended thereby to prefer the *Banque de Mulhouse* to their other creditors. That was true, not only at the time when Messrs. *Steele, Miller and Company* delivered to the *Compagnie Generale Transatlantique* the cotton covered by the custody bills; that delivery has moreover been done by *Steele, Miller and Company* without the knowledge of the *Banque de Mulhouse.* But it was also true at the time when Messrs. *Steele, Miller and Company* sent, also without the knowledge of the *Banque de Mulhouse,* the said custody bills to Havre.

"It was always true at the dates of the 3rd and 7th of May, 1910, when the said custody bills of lading were delivered into the material and physical possession of the *Banque de Mulhouse.* The *Banque de Mulhouse* has never indeed known nor suspected, nor has it even had occasion to know or suspect, that Messrs. *Steele, Miller and Company* intended to give preference to it, by these bills of lading, to the prejudice of its creditors, as the matter refers to custody bills appertaining to the same number of bales with the same marks and numbers as the through bills of lading detained by the bank and that Messrs. *Steele, Miller and Company* for several months had delivered to the bank, over and over again, custody bills corresponding in the like manner as to numbers and marks of bales with the through bills attached to the documentary drafts that it had accepted. *The Banque de Mulhouse* has not considered even at the dates of the 3rd and 7th of May, 1910 (the only period of the three periods at which it knew the financial situation of Messrs. *Steele, Miller and Company*), that it was possible it could be a competition of other creditors of Messrs. *Steele, Miller and Company* for those same goods which it considered as its property since its acceptances" (pp. 590-1).

Mr. Dubois says:

"The delivery of those 400 bales to the Compagnie Generale Transatlantique, which were covered by the said custody bills, and the mailing of those custody bills to Havre was done by Steele, Miller and Company, on their initiative, unknown to the Societe Generale; for that reason the Societe Generale knew nothing and could have no knowledge of the fact that Steele, Miller and Company, by doing likewise, thereby marked their intention to favor us to the detriment of the other creditors.

"Moreover, as the Societe Generale has always considered that they obtained the full right on the cotton described in the drafts and through bills attached after having accepted those drafts, the fact that on the 26th of April they received custody bills covering the same cotton, could really not have made them suppose that they received a preference in that way to the detriment of other creditors, who they did not even know existed" (p. 683).

In answer to the twenty-fourth interrogatory the witnesses declare that when the banks received the custody bills of lading that they did not know or believe that they were thereby receiving an interest or right in or over the cotton purporting to be covered thereby in addition to what they believed they had already had in virtue of their acceptance of the drafts and as holders of the through bills attached thereto; that the banks did not see in the delivery of the custody bills of lading anything more than the consequence of the acceptance of the documentary drafts.

We quote the answer of Mr. Dubois as follows:

"When receiving the said custody bills on the 26th of April, the Societe Generale did not know or believe that they received in that way any interest or any more right to the cotton which those bills were said to cover, than they already firmly believed they possessed as acceptors of the said four drafts and as possessors of the said through bills attached to same.

"Before the 26th of April, we thought, and this was strengthened through our experience during that season, that we would continue to receive our cotton, at the unloading, by presenting through bills, possibly accompanied by agent's or master's receipts

which were remitted to us by Scheuch and Company when they received same from the exporters. Experience has taught us that those agent's or master's receipts were not strictly necessary, as up to the 26th of April, out of the 5700 bales obtained by us through presenting *our through bills,* 2000 bales had been obtained by us from the Compagnie Generale Transatlantique from four steamers *without the slightest difficulty,* although we had no agent's or master's receipt corresponding with the through bills for those 2000 bales.

"On the 26th of April when we received custody bills instead and in place of agent's or master's receipts we thought that the cotton represented by same was the same as that covered by the through bills and that on the 15th of April, Steele, Miller and Company had not been able to obtain those custody bills, without giving security, as they had done previously, in conformity with their declarations treated in answer No. 21 and in which we sincerely believed" (pp. 683-4).

Interrogatory twenty-five calls for the knowledge of the banks in respect to the financial condition of Steele, Miller and Company. The answer of one witness will do for all. Mr. Dubois says:

"The Societe Generale had full confidence in the solvency of Steele, Miller and Company when they accepted the aforesaid drafts on the 21st of February; this they proved by accepting the drafts for 2000 bales of cotton between the 18th and 24th of February, 1910, (see answer No. 18).

"Far from knowing the bad situation Messrs. Steele, Miller and Company were in, the Societe Generale believed the situation to be good.

"On the 15th of April, the date of the custody

bills, nothing had come to our knowledge which might have diminished the confidence which the Societe Generale had in the solvency of Steele, Miller and Company's financial situation.

"On Tuesday, the 26th of April, when the Societe Generale received the four custody bills dated 15th of April, early in the afternoon, they had no knowledge of the insolvency of Steele, Miller and Company; of this they were informed on the 29th of April by Messrs. Scheuch and Company.

"Before that date the Societe Generale had only known the following:

"On the 21st of April, in the morning, we heard that Knight, Yancey and Company had stopped payments; this news we heard, was known the day before in Liverpool; at that time there was no rumors concerning Steele, Miller and Company.

"On Saturday evening, April the 23rd, Scheuch and Company told us that they had received a wire from Bremen informing them that a bank in said town had refused to accept drafts drawn by Steele, Miller and Company, and alleging to have that [done] same out of principle. We thought that the said bank acted likewise by way of precaution because of the unfavorable impressions made by the discovery of the frauds committed by Knight, Yancey and Company; we had not the slightest idea that Steele, Miller and Company could have committed similar acts, and we did not doubt that they would promptly settle their business with the Bremen bank by taking the necessary steps which we thought their financial position was capable of doing.

"In the evening of the 26th of April, some hours after we had received our custody bills (3 or 4 hours), dated the 15th of April, we were informed that a firm in Havre had received a cable from New Orleans stating the failure of Steele, Miller and Company.

"We communicated this to Scheuch and Company, who told us that they were very much surprised at that, as they had not heard of it from Steele, Miller and Company, and they ought to have been informed in the very first place.

"In the morning of the 27th of April that same Havre firm found a second cable from their correspondents in New Orleans asking them to keep the news contained in their first cable strictly private, as the failure had not been confirmed.

"The 27th and 28th of April we were still under the impression of this quasi denial, we still believed that Steele, Miller and Company were in momentary difficulties which could be settled and which had been caused by the refusal of Bremen to accept their drafts; because we still did not know the actual situation they were in.

"At last, on the 29th of April, Messrs. Scheuch and Company informed us that they had just received a cable from Messrs. Steele, Miller and Company telling them that they had been obliged to stop payments.

"From that date and up to the 7th of May inclusive we had not received any other information *re* the actual situation of Steele, Miller and Company; during the whole of that period the Societe Generale and myself had never had any information referring to the amount of the assets and the engagements of Steele, Miller and Company, neither did we have any details which enabled us to make a comparison between the value of their assets and their liabilities" (pp. 684-6).

By interrogatory twenty-six the witnesses were asked what effect, if any, knowledge of the insolvency of Steele, Miller and Company, if it had been possessed by the banks either on the date of the forwarding of the cus-

tody bills of lading or on the date of their arrival at Havre, would have had upon the belief of the banks that they each were receiving only cotton to which it alone was entitled. To this the witnesses make the obviously truthful answer that such knowledge would have had no effect because they would still have been under the belief that the custody bills represented the cotton which had been shipped at the dates of the draft, cotton which they had paid for had long been in constructive possession of, and in which no other creditor had any rights (pp. 594, 686).

Questioned in interrogatory twenty-eighth as to the notice appearing in the "Bulletin de Correspondence," published at Havre, April 27th, 1910, the matter is sufficiently covered by the answer of Mr. Dubois, which we quote:

> "I have already mentioned (answer No. 25) the receipt of the cable received in the evening of the 26th of April by a firm in Havre and of the arrival of one in the morning of the 27th, informing them that the failure of Steele, Miller and Company had not been confirmed. I must have read the 'Bulletin de Correspondence' in the morning of the 28th of April; it appeared late in the evening of the 27th. I believe that I can remember having spoken about it to Messrs. Scheuch and Company, and that they said that they did not believe that the news was correct because they would certainly have been informed directly.
>
> "The news arrived at Scheuch and Company in the morning of the 29th of April, at a time when I could have obtained some information from the 'Bulletin de Correspondence' of the evening before.
>
> "In Havre, as well as in foreign towns, exagger-

ated rumors get about in troubled times which are sometimes incorrect; these the papers get hold of and publish same without verifying them. During that period the failure of two American cotton houses was reported to me, and those same houses are still in existence. I could not do otherwise than address myself to Scheuch and Company for information.

"The two articles evidently refer to Steele, Miller and Company, but they do not throw any light onto their financial position. 'It is to be hoped that the rumors afloat are exaggerated, and *one does not make any illusion to frauds committed.*' One talks about the non-delivery of bought cotton, which would only convey to us that European merchants had bought cotton from Steele, Miller and Company at a time when the price was lower, and that, since a rise had taken place, Messrs. Steele, Miller and Company were not delivering that cotton, which would result in a loss to the buyers" (pp. 688-9).

All of the witnesses declare that they had never read or heard of the notice or item appearing in the Liverpool paper referred to in interrogatory twenty-nine.

The interrogatories not specifically referred to do not directly bear upon the branch of the case now under discussion, absence of guilty knowledge on the part of the banks.

If the testimony of the defendant banks stood in need of support, it would find confirmation in the testimony of Mr. Linde. That witness declares that the banks were completely ignorant of the fraudulent practices of Steele, Miller & Company and were innocent victims, and that the purpose of subsequently appropriating cotton to the

forged bills of lading was simply to keep the wheel turning and was in pursuance of the methods which Steele, Miller & Company had for a long time followed and in execution of an intention formed when the drafts were originally drawn. His testimony presents the reverse side of the picture. When the court reads it, no argument will be necessary to show how unfounded is the theory that there was any collusion or understanding between Steele, Miller & Company and the different defendant banks or banker, or any intention on the one side to give a preference or any guilty knowledge on the other. The intention which resulted in the transfer and delivery complained of was not formed on the eve of expected insolvency or for the purpose of defeating the bankrupt law or to prefer any particular creditor or set of creditors. It existed from the moment the drafts were drawn against the banks, when the sky was all serene, and it was completely consummated, so far as it depended on any action of Steele, Miller & Company, before the storm broke upon them. All the lots of cotton in suit had been set aside and appropriated, started on their way to Havre, the inland bills of lading therefor surrendered and delivery orders to the ocean carrier issued, all before even the Knight Yancey failure.

The dates of the custody bills of lading covering the cotton in question, each bill of lading representing 100 bales, are as follows:

The four concerning the cotton of the Societe Generale are all dated April 15th. The one covering the 199 bales of the Credit Havrais is dated April 23rd, and the one covering the 100 bales of the Comptoir d'Escompte de Mulhouse was dated April 25th. Of the nine repre-

senting the cotton of the Bank of Mulhouse, one was dated April 19th, two April 20th, one April 22nd, and five April 25th. Of the ten representing the cotton of Paul Chardin, one bore date April 19th, two April 20th, four April 21st, one April 23rd, and two April 25th.

The dates of inland railroad bills of lading under which the above cotton was brought to this port and the dates when Mr. Hardin, agent of Steele, Miller and Company, acting under previously given instructions, issued the delivery orders under which the cotton was delivered to the ocean carrier, are as follows (testimony of Hardin, pp. 149-153):

> The bills of lading under which the cotton of the Societe Generale moved were dated, three February 3rd, and one February 1st. Date of delivery order was April 13th. The inland bill of lading covering the cotton of the Credit Havrais was dated April 6th, and the delivery April 15th, and the bill of lading for the cotton of the Comptoir d'Escompte de Mulhouse was dated April 5th and the delivery order April 13th. Mr. Hardin was unable to state the dates of the inland bills of lading covering the Chardin cotton or the cotton of the Bank of Mulhouse, but under the allegations of the bill of complaint, the cotton was ready for shipment not later than April 6th. Delivery orders covering 300 bales of the Bank of Mulhouse cotton bore date April 11th, those covering 300 more bales were dated April 13th, and those covering the remaining 300 bales were dated April 23rd. As to the Chardin cotton delivery orders for 400 bales were dated April 16th, and for the balance April 18th.
>
> The inland bills of lading in respect to the cotton of the Societe Generale were through bills of lading, bearing the same dates, places of shipment,

etc., as the forged bills of lading. The manner of effecting delivery, forwarding, etc., of the "Texas" cotton was in accordance with the methods of business which Steele, Miller and Company had been pursuing all that season.

It will be seen from the foregoing that in respect to all the "Texas" cotton, the inland railroad bills of lading had been surrendered and the delivery orders under which the cotton reached the possession of the ocean carrier had been sent out on or prior to April 18th, with the exception of 300 bales, the delivery order for which was dated April 23rd.

There was no association whatever between the four Havre banks on one side and Paul Chardin on the other. Their business was different, their relations to Steele, Miller and Company entirely independent, and there was no reason for co-operation between them on April 26th. The banks had no knowledge of or concern with Paul Chardin's troubles. To maintain that they knew of or were effected by any communication between Chardin and the Compagnie Generale can find no support in this record. We take issue with any statement to the contrary and appeal to the record. The four banks and Chardin stood apart and remained apart, until they were brought together by the arrest of their cotton in the same suit on May 7th.

In regard to the record of a suit on April 26th, 1910, in Mississippi against Steele, Miller and Company, it is sufficient to say that defendants cannot be affected by a proceeding of which it is not shown that they or any one else except the parties thereto had any knowledge.

III.

Requisites of a Suit to Avoid a Preferential Transfer and the Defenses Thereto.

The events giving rise to this litigation occurred prior to the amendment to the Bankruptcy Act in 1910. It is governed by the provisions of section 60b as amended in 1903 (32 Stat., 799). The frequent citation which will be made in this brief of decisions of the lower federal courts is explained by the fact that questions of the character involved in this controversy are so often finally decided in those courts that decisions of this court directly in point and rendered under the present Bankruptcy Act are not always available.

The law is now well settled that, in order to set aside or recover a preference under the provisions of section 60b of the Bankruptcy Act, it must be established by competent evidence that the bankrupt was insolvent at the time he made the payment, that *he intended thereby to give a preference*, and that the creditor receiving it or benefited thereby had reasonable cause at the time to believe that it was intended thereby to give a preference.

The words in italics are perhaps the only part of the above statement which will be objected to by appellant. In the general statement of the case we called attention to the fact that there was no intention, actual or presumed, on the part of Steele, Miller and Company to prefer any of the defendant banks. We now submit that the reasonable implication of the statute is that the debtor himself must have intended a preference. The lower federal courts have accordingly frequently held that there must have been an actual intention on the

part of the debtor to give a preference, and that such an intention cannot be presumed from the fact alone that he knew himself to be insolvent or from the fact alone that a preference was given. No one can reasonably be charged with reasonable cause to believe something unless the something existed to which the belief is supposed to relate. Guilty intention on the part of the transferer is just as essential as guilty knowledge on the part of the transferee. Like any other fact the intention may be established by circumstantial evidence, by just and necessary inferences from proven facts; but it must be shown to exist. It is not a presumption of law arising from proof of payment or transfer at a time of known insolvency.

Hardy v. *Gray* (C. C. A. First Circuit), 144 Fed., 922; *Clarke* v. *Rogers* (C. C. A., Same Circuit), 183 Fed., p. 526; *Tumlin* v. *Bryan* (C. C. A. Fifth Circuit), 165 Fed., p. 168; *In re First National Bank of Louisville* (C. C. A., Sixth Circuit), 155 Fed., pp. 103-4; *Rutland County Nat. Bank* v. *Graves*, 156 Fed., p. 170; *In re M'Loon*, 162 Fed., p. 578; *Debus* v. *Yates*, 193 Fed., p. 435, ffg.; *In re Freeman Cotting Coat Co.*, 212 Fed., 548, 551.

The conclusions reached in the above cited cases are supported by the decisions of this court in *Wilson* v. *City Bank*, 17 Wall., p. 486; *Grant* v. *National Bank*, 97 U. S., p. 81, and *Barbour* v. *Priest*, 103 U. S., p. 296.

We have pointed out in the general statement of the case that to show guilty knowledge on the part of the banks the trustee relies upon the existence of circumstances which he claims ought to have led the banks to suspect something and upon alleged knowledge of Steele, Miller and Company's insolvency.

It is hardly necessary to cite authorities in support of the proposition that reasonable cause to believe that a preference was intended cannot be held to be proved by circumstances that would merely excite suspicion, especially when the evidence shows that every effort was made by the bankrupts to allay suspicion and that such efforts were successful. *Tumlin* v. *Bryan* (C. C. A.), 165 Fed., p. 169, citing *Grant* v. *National Bank,* 97 U. S., 80, and *Stucky* v. *Masonic Savings Bank,* 108 U. S., 74.

As to the insolvency of Steele, Miller and Company, we have already shown that it was not known until after the transfers complained of had taken place, and that if it had been sooner known, it could not reasonably have been expected to create any belief of an intended preference. A belief that a debtor was insolvent does not necessarily create reasonable cause for belief that he intended a preference. *In re First National Bank of Louisville* (C. C. A.), 155 Fed., p. 104; *Tumlin* v. *Bryan* (C. C. A.), 165 Fed., 168.

The burden of proof is, of course, on the trustee to establish the facts necessary to make out a case of voidable transfer.

Our defense is that there was never any intention on the part of Steele, Miller and Company to prefer the banks and that at no time prior to the transfers complained of did the banks have reasonable cause to believe that they were receiving a preference. Their first knowledge of the transfers attacked was on May 8th, 1910, the day after the beginning of the proceedings to set them aside. It is therefore not necessary to determine the exact date when the transfers took place. If this Court approves, as we believe it will, the application

made by the Court of Appeals to this case of the doctrine of appropriation, it will find that the title to the cotton passed when the cotton was acquired, assembled, marked, etc. (that is, on March 23rd and April 6th), or, if not at that time, then certainly when the appropriation was completely consummated and carried into effect by the delivery of the various lots of cotton, with their identifying marks, to the ocean carrier at New Orleans, which took place on various dates from April 15th to April 25th. It will not be even claimed that either on March 23rd or April 6th or April 15th or April 25th there existed any reasonable ground for belief on the part of the banks that a preference was being given or received. Their title to or rights in the cotton would then arise prior to the existence of the custody bills of lading, and prior to any alleged ground for suspicion of fraud or alleged knowledge of insolvency. We shall accordingly discuss, under the next heading, the doctrine of appropriation and its application to this litigation. We shall afterwards endeavor to show that, irrespective of the doctrine of appropriation, the bankrupts parted with the title to and possession of the property, and completely lost all their *jus disponendi,* when they delivered the cotton to the ocean carrier or certainly when they mailed the bills of lading therefor, and that again the trustee's case falls, because the transfer would again antedate the alleged grounds for reasonable cause to believe a preference was being given.

IV.

The Defense Based on the Doctrine of Appropriation. Its Application to Suits to Set Aside Voidable Transfers, and its Effect in the Present Suit.

In the general statement of the case and in stating the defenses relied upon we explained the part the law of appropriation can play in this case. We, of course, do not contend that a transfer taking place by operation of the law of appropriation may not be as readily set aside as any other transfer, *provided* it be shown to have the elements of a preferential transfer. But it is true of a transfer by appropriation as of any other transfer that the reasonable ground for belief must exist at the time of the transfer. If the doctrine of appropriation is applied to this case, then the transfer took place, not on the arrival of the custody bills at Havre, but when the appropriation took place, and the appropriation took place, in the case of the Societe Generale, prior to March 23rd, and in the case of other banks prior to April 6th, at which dates the different lots of cotton had been acquired, assembled, marked and appropriated to the obligations of Steele, Miller and Company to transfer such cotton to the respective banks. Even if the Court should hold that the appropriation did not take effect until the cotton was brought to New Orleans and delivered to the ocean carrier, this would locate the transfer in the case of the Societe Generale on April 15th and in the case of the other banks on various dates, none later than April 25.

The fatal effect on the trustee's case of the recogni-

tion of defendant's rights under the law of appropriation is obvious. For the alleged transfer, the coming into existence of the defendant banks' title to or right in the cotton, does not date from the arrival of the custody bills of lading in Havre but long prior thereto, and when it would be hopeless for the trustee to claim that any reasonable ground existed for belief by the banks that a preference was being given.

We do not deem it necessary to discuss at length the general doctrine of appropriation or its applicability to a case of forged bills of lading attached to drafts and the subsequent acquisition of property to meet the obligations arising from the drafts and the forged documents. We rely upon *The Idaho,* 93 U. S., 575, 581-583, and upon the reasoning of the Circuit Court of Appeals in *Lovell* v. *Newman,* 192 Fed., 753, 758-761. The cases at bar are stronger than the *Newman case* because the evidence of title, the genuine bills of lading, had been forwarded and had left the possession of Steele, Miller and Company before they had even suspended payment, and, of course, before any claim was made to the cotton by the receiver or trustee. It does not affect the principles of law involved or their applicability that in the case of Knight Yancey the fraud was worked by suppressing the genuine bills of lading and allowing delivery to be obtained through the bogus bills, while Steele, Miller and Company concealed their fraud by the device of forwarding the genuine bills of lading, and, by plausible and deceptive statements, exchanging them for the bogus documents.

That the decision of the Court of Appeals in the *Newman case* is in accord with well established principles

of the law of sales regarding the passage of title on shipment by carrier will be seen from the following authorities:

Benjamin in his work on Sales says (p. 343):

> "The property is transferred the moment the dispatch or other act has commenced, for there an appropriation is made finally and conclusively by the authority conferred in the agreement, and in Lord Coke's language: 'The certainty, and thereby the property begins by election.'"

At page 350 Benjamin states it to be:

> "Settled law, that where a seller delivers goods to a carrier by order of the purchaser, the appropriation is determined; the delivery to the carrier is a delivery to the buyer and the property vests immediately.
>
> "And in the United States the law is established to the same effect."

See:

> 24 Am. & Eng. Ency. of Law, 2 ed., pp. 1059, 1071.

In *Williston on Sales,* pp. 398-400, the law is stated as follows:

> "By far the commonest and most important illustration of the transfer of property in goods by subsequent appropriation by the seller arises where the seller, in fulfillment of a contract with, or an offer from the buyer, delivers goods to a carrier for shipment to the buyer. That the property passes on delivery to the carrier, under these circumstances, was settled indeed before the general rules as to appropriation by the seller had been completely

> formulated. * * * Whatever reasons may be given for the rule, it is well settled both in England and in this country."

In *United States* v. *Andrews,* 207 U. S., 240, this Court said:

> "That where a purchaser of goods directs their delivery for his account to a designated carrier, the latter becomes the agent of the purchaser, and delivery to such carrier is a legal delivery to the purchaser is also beyond question."

If it be contended that the Court of Appeals erred in applying its conclusions in the *Newman case* to the present cases, because the claimants of the cotton in the *Newman case* were actual purchasers, while in the present cases the bankers hold only security title or were purchasers for security, we answer as follows:

1.—In the case of *Hentz & Company* vs. *Lovell,* 192 Fed., 762, the doctrine of appropriation was applied to holders of bills of lading for security. The facts of that case are fully stated in the opinion of the District Court, reported in 181 Fed., 555. By reference to the last cited decision it will be found that the cotton awarded to Hentz & Company was cotton on which they had made a loan or advance through acceptance and payment of a draft drawn with the forged bills of lading attached.

2.—A still more conclusive answer is that in The Idaho, Porter and Company were not purchasers, but advancers of money on the faith of the bill of lading.

3.—No reason can be assigned why the principle of appropriation should not operate in favor of those hav-

ing rights *in rem* arising from other contracts than those of purchase and sale. It applies under the Civil Law to mortgages (Civil Code of Louisiana, Art. 3304) and to pledges (Civil Code 3144, and *Herber* v. *Thompson,* 47 La. An., p. 809). There is no material difference, so far as the doctrine of appropriation is concerned, between a contract to transfer the legal title and a special property and a contract to transfer the legal title and the entire property.

4.—*The rights of a bank which has accepted a draft and received therewith a negotiable bill of lading representing the goods for the value of which the draft is drawn, are similar to those of a purchaser and are to be worked out on the same principles as would be applicable to purchasers for use.*

Our contention is, not that the banks actually purchased the cotton in question for their use, but that their right, title or interest in the cotton, until they were repaid the amount of the drafts, were those of a purchaser; that they had a special property or ownership in the goods equal to the amount of the drafts and if the drafts represented the value of the goods, their special property or ownership therein was complete; that the banks were not to be regarded as mortgagees or pledgees, but as persons to whom a special property or ownership had been transferred, *i. e.,* as vendees. The overwhelming weight of authority, as we shall presently show, supports our contention.

Before discussing the authorities we wish to say that the case of the banks does not depend upon the Court's regarding them as purchaser of the cotton. The banks

certainly have a right *in rem* to secure their advances. In the answer of each defendant appears this paragraph:

> 10.—"It avers that it has fully set forth the facts constituting the transactions between it and Steele, Miller and Company, and that it has a right to ask this Honorable Court, as it now does, to define, recognize and enforce its rights in, to or in respect to, said cotton; that whether it has the full and complete title thereto, as it is advised and so claims, or whether it has a qualified ownership or special property therein, or an equitable lien or charge or a right in the nature of a pledge, its rights or title to said cotton were not created by any voidable or preferential transfer, are superior to any rights or title of complainant, and entitle it to be awarded said cotton or its proceeds and to a dissolution of the restraining and injunctive orders heretofore issued in this cause, as well as in said cause No. 14219."

Our contention is well supported by the following cases:

In *Dows* v. *National Exchange Bank*, 91 U. S., 618, the syllabus is to this effect:

> "A party discounting a draft and receiving therewith, deliverable to his order, a bill of lading of the goods against which the draft was drawn, acquires a special property in them, and has a complete right to hold them as security for the acceptance and payment of the draft. Where such party forwarded the draft, with the bill of lading thereto attached, to an agent, with instructions, by special endorsement on the bill and by letter to hold the wheat in a bill mentioned against which the draft had been drawn, until payment of the draft should

be made, the agent had no power, prior to such payment, to make a delivery which would divest the ownership of his principal."

And in the opinion it is said of a bank which had discounted drafts drawn against the property, and to which the bills of lading were delivered with the drafts as security that it became the owner of the property and had a complete right to maintain ownership until payment.

The case of *Dows* v. *National Exchange Bank* was cited with approval in the case of *Means* v. *Bank of Randall,* 146 U. S., 627, where the Court declared that when the bill of lading is transferred and delivered as collateral security, *i. e.,* to a bank advancing the price, the rights of the transferee of the bill of lading were *"The same as those of an actual purchaser,* so far as the exercise of those rights was necessary to protect the holder."

Citing the two above cases, it was declared in *Merchants Exchange Bank* v. *McGraw,* 76 Fed. Rep., pp. 930-33, dealing with the case of a bank which had accepted a draft with invoice and bill of lading attached:

> "There are numerous authorities which, in substance, declare that the delivery by an owner of goods of a common carrier's receipt for them as security for an advance of money with the intention to transfer the property in the goods, is a symbolical delivery of them, and vests in the person making the advance a special property in the goods sufficient to enable him to maintain replevin or trover, or other action at law against another who attaches them upon a writ against the general owner."

In the case of *In re E. Reboulin Fils and Company,* 165 Fed., page 245, the bankrupts had engagements d'importation with Munroe and Company, bankers in Paris with a branch or agency in this country. In virtue thereof the bankrupts, importers of cherries, drew drafts on Munroe and Company with invoices and bills of lading attached. The bills of lading were giving up to the bankrupts under a trust receipt and they thus secured possession of a certain shipment of cherries before Munroe and Company had been reimbursed for the draft drawn against the same. In this condition of things the bankruptcy occurred. Held, that the acceptor of the draft had a general or special property in the goods and was entitled to receive the same or the proceeds from the trustee in bankruptcy. After stating the facts the Court said (p. 246):

> "This being so, under all of the authorities, the petitioner had either a general or special property in the merchandise thereby represented, which was valid against all the world."

In a case decided by the United States Circuit Court for the Southern District of New York, *Charavay and Bodvin* v. *York Silk Manufacturing Company,* 170 Fed., 819, the rights of a bank which advances money or credit for the purchase of goods for importation are thus stated:

> "A bank which advances money or credit for the purchase of goods for import, taking the bills of lading in its own name becomes the legal owner of the goods, but its title is not an absolute but only a security title." *Syllabus.*

It was further held that the bank was not then a mere pledgee or mortgagee, and hence its rights or special property in the goods were not lost by the surrender of the goods to the importer for sale or, as was the fact in the particular case, for conversion of raw material into manufactured product. It was also held that the bank could retake the goods from the receiver of the importer and sell the same, and if the proceeds were not sufficient to cover the draft it could recover the deficiency from the receiver of the importer.

The case contains an interesting discussion of some of the cases on the subject of the rights of a bank accepting a draft with invoice and bill of lading attached. All the cases seem to agree in holding that the bank has legal title to the goods, at least a special property or qualified ownership, something stronger than that of pledgee or mortgagee, which gives the bank all the rights of a *bona fide* purchaser or owner to the extent of its advances. See also *In re Cattus,* 183 Fed., 733, p. 735.

The Supreme Court of Connecticut held that the rights of an accepting bank must be worked out on the theory of that of *a purchaser,* taking ownership for security, instead of for profit. See *Baring* v. *Galpin* (Conn.), 18 Atl. Rep., 266, where there is a full discussion of the Federal, State and English authorities.

It is the generally accepted rule in the state courts that a bank accepting a draft with a bill of lading attached has all the rights of a *bona fide* purchaser.

Bank of Rochester vs. *Jones,* 4 N. Y., 497; *Farmers etc. Bank* v. *Logan,* 74 N. Y., 569; *Moors* v. *Kidder,* 106 N. Y., 42; *Drexel* v. *Pease,* 133 N. Y., 129; *Moors* v. *Drury* (Mass.), 71 N. E. Rep., 810; *Moors* v. *Wyman* (Mass.), 15 N. E., 104; *Brown* v. *Billington* (Pa.), 29 At. Rep., 904;

Neill v. *Rogers Bros. Produce Co.* (W. Va.), 23 S. E. Rep., 702.

As the drafts equaled the value of the cotton, and as the accepting banks have suffered damages in loss of interest and enormous costs and expenses of this litigation, their special property in the cotton is equivalent to the entire property therein. Their rights are to be worked out on the same principles of law as would be applicable if they were merchants, importers of cotton, who had bought the cotton in question directly from Steele, Miller & Company. They occupy an even more favorable position, as the question of exact compliance with terms of sale does not arise.

As to the time when the transfer by appropriation took place, according to our understanding of the above cases, it took place on March 23rd in the case of Societe Generale, and in the case of the other defendant banks, on April 6th. On those dates Steele, Miller and Company delivered to the Railroad Company at certain interior points various lots of cotton corresponding in all respects with the cotton described in the drafts and in the attached invoices and bogus bills of lading. By so marking and shipping the cotton they intended to appropriate and did appropriate it to the fulfilment of their contract obligations to the drawees of the drafts. Those contract obligations were to transfer to the accepting drawees the title to the cotton and a special property or ownership therein equal to the amount of the drafts. If the transfer did not take place at the dates mentioned, it certainly took effect on the delivery of the cotton to the ocean carrier at New Orleans, prior to and independent of the subsequent mailing of the custody bills of lading.

The facts to be considered on this branch of the case are clear and undisputed. The trustee states in his bill in each case the facts which make out a case of appropriation when he declares that, in the case of the Societe Generale prior to March 23rd, and in the case of the other banks prior to April 6th, Steele, Miller and Company had acquired, collected, separated into lots and marked the various lots of cotton to correspond exactly with lots and marks of the cotton drawn against, as described in the drafts and attached bills of lading, and on those dates started the cotton on its way to Havre. From that time on there was no turning aside or doing of anything inconsistent with the intention to appropriate the cotton to the obligations growing out of the original transactions between Steele, Miller and Company and the banks. The custody bills of lading were forwarded immediately upon their issuance and before the filing of the petition in bankruptcy, and were obtained and used for no other purpose than to facilitate the banks in obtaining physical possession of the cotton.

We ask attention to the following extract from the deposition of complainant's witness, C. H. G. Linde, pages 214-215.

> "Q. Now, referring to all five cases about which we have been questioning you, making up the cotton loaded on the steamship 'Texas,' when you drew drafts on bogus bills of lading, did your firm expect later to make good by subsequently shipping the cotton which ought to have been shipped at the time of the drawing and forwarding of the drafts?
>
> A. Yes, sir.
>
> Q. That was your original intention?

A. Yes, sir.

Q. In other words it was the original intention of your firm to deliver in this way the cotton against which the drafts had been drawn?

A. Yes, sir.

Q. And you wanted to make delivery in such a way that the acceptors of the drafts would not know that the cotton had not been shipped at the time the drafts were forwarded?

A. Yes, sir.

Q. You had done this frequently before the affair of the Texas cotton?

A. Yes, sir.

Q. How many bales of cotton had you sold and delivered in this way without the irregularity as to the time of shipment being discovered?

A. I am unable to say.

Q. Were there many thousands?

A. Yes, sir; many, many thousands.

Q. Would it not be true to say then, that when you subsequently acquired, assembled and marked and shipped the various lots of cotton covered by the drafts previously drawn, you were simply doing what you had all along intended to do?

A. Yes, sir."

The application of the law of appropriation to the facts leaves nothing of the trustee's case. The banks had a superior right or title to the property long prior to any of the facts or circumstances relied upon as a basis for imputing to them guilty knowledge. Considering the rights of the banks under the original transactions with Steele, Miller and Company, in connection with the subsequent appropriation of the cotton in controversy to the contract obligations growing out of those transactions, it follows that, if the ignorance of the

banks had not prevented them from having any belief on the subject at all, it would have been more reasonable for them to have regarded the acts alleged to have constituted the voidable transfer as transferring to them what they already had title to and what was justly due them rather than as intended to give them an unfair preference.

As Steele, Miller & Company, during almost the entire period of their business relations with the defendant banks, had been fulfilling their obligations under similar drafts and forged bills of lading, it is idle to talk about proof of intention or agreed dates of delivery or grades, etc. They cut no figure in this case, for the reasons stated by the Court of Appeals in the Newman case, and for the additional reason of previous course of dealing, and because we are mainly concerned with consigned cotton.

By reference to paragraph 10 of the answers, quoted above, it will be found that each defendant bank set up that whether it had the full and complete title to the cotton, as it claims, or whether it had a qualified ownership or special property therein, or an equitable lien or charge for a right in the nature of a pledge, its rights or title to the cotton were not created by any voidable or preferential transfer, are superior to any rights or title of the trustee, and entitle it to be awarded the cotton or its proceeds. If the court should not approve of the doctrine of the transfer by appropriation, then we ask that it apply to these cases the principles applied in *Sexton* v. *Kessler,* 225 U. S., 90, 91 (affirming decision of the Court of Appeals, reported in 172 Fed., 535); *In re Automobile Co.,* 176 Fed., 792; *Mills* v. *Virginia, etc., Co.* (C. C. A.), 164 Fed., 168; *In re Brown*

(C. C. A.), 175 Fed., 769; and *Wood* v. *United States Fidelity Co.*, 143 Fed., 424. These authorities justify the contention that the banks had such rights in to or in respect to the cotton that a delivery thereof by Steele, Miller and Company, even after suspension of payment, would not constitute a preference; that taking possession or transfer under such circumstances *relates* back to the time of the original transaction and is supported by the original consideration, which must be considered as a present consideration.

To paraphrase the words of this Court in *Hurley* vs. *Atchinson, etc., Ry. Co.*, 213 U. S., 126: To regard the transaction as one of an independent loan of money to Steele, Miller and Company, and to regard the forwarding or delivery of the ocean bills of lading as a *dation en paiement*, would destroy the obligations of Steele, Miller and Company and place the parties in relation to each other on an entirely different basis from what was contemplated when the original arrangement was entered into.

V.

Independently of the Law of Appropriation the Case is With the Defendant Banks, Because the Trustee Has Failed to Show Actual Intention on the Part of the Bankrupts to Give a Preference and Reasonable Ground for Belief on the Part of the Banks at Any Time That a Preference Was so Intended.

1.—It was not the intention of Steele, Miller & Company, in making the alleged transfer, to give the banks a preference.

This point has already been sufficiently discussed. It clearly appears from peculiar business methods of Steele, Miller and Company, as well as from the testimony on cross-examination of the witness Linde, a member of the firm, that the object of Steele, Miller and Company in shipping the cotton in question when and as they did was not to favor the Havre banks or to defeat the bankrupt law. They were not contemplating bankruptcy. They hoped to continue their kiting operations, and eventually "be able to pull out" Linde (p. 218). They had no partial feelings for the Havre banks. When in the fall of 1909 Linde learned of the fraudulent practices of his firm there was no letting up on the Havre banks. They were drawn on more heavily than ever in December, January and February, until they were loaded to the utmost limit of their obligations d'importation. Even then Linde made efforts to get the banks to enlarge or extend new credits before he sought new victims. He finally drew on Liverpool and Bremen because he had no other resources. He shipped cotton to Havre because that was the only way to continue his business, and because in this way new credits would automatically be opened to his firm. In the language of the letter to Scheuch and Company, cotton was forwarded to the Havre banks "in order to encourage these friends to loosen up for further reimbursement credits." Scheuch's deposition, Exhibit 665, page 477. The cotton in question was started on its way to Havre on or prior to March 23rd, in the case of the Societe Generale, and on or prior to April 6th in the case of the other banks. Steele, Miller and Company were not then anticipating trouble. The cotton was forwarded to the Havre banks because

it was their turn in the turn of the wheel to receive credit. Had the crash been postponed several months the trustee would doubtless have had, as parties defendant to this litigation, the Bremen instead of the Havre banks. See Linde's testimony, pp. 229-230 and 242.

2.—The trustee has failed to show that at the time of the transfer the defendant banks had reasonable ground for belief that a preference was thereby intended.

Ignorance of the acts constituting the alleged voidable transfer precludes the existence of ground for belief that an intended preference is thereby received. One cannot have any belief as to the character of an unknown transfer. That a preferential transfer is not voidable under the statute when made without the procurance or knowledge of the transferee has been frequently held. *McNaboe* v. *Columbian Manufacturing Co.* (C. C. A.), 153 Fed., 967; *Wright* v. *Sampter,* 152 Fed., 196; *Reber* v. *Shulman,* 183 Fed., 564; *Sexton* v. *Kessler and Company* (C. C. A.), 172 Fed., at page 535. In the first three cases there was an admitted transfer within the prohibited period with intent to prefer; but the fact that it was made without the knowledge of the transferee was held fatal to the trustee's suit to avoid the transfer. One of the cases was like the present case in that the transfer was intended to repair a secret fraud of the transferrer against the transferee.

That the banks were entirely ignorant of the subsequent acquisition and shipment of cotton to repair a previous fraud, that they were also entirely ignorant of the fact that the bills of lading held by them were forgeries and hence entirely ignorant of any attempted substitu-

tion of good bills for worthless bills, has been established by the uncontradicted testimony of a number of reputable witnesses.

Presence of reasonable ground for belief that property which one receives is property which belongs to him, to which he is justly and exclusively entitled, cannot coexist with reasonable ground for belief that by the delivery and receipt of such property an unlawful preference is given and received. Believing, as they did, up to receiving news on May 8th of the proceedings taken in Court on May 7th, that the cotton in question was cotton shipped under the bills of lading annexed to the drafts and was therefore cotton which they had paid for and were exclusively entitled to, it never entered into the heads of the banks to believe that any unlawful preference could be involved in the delivery of such cotton to them. It is established by abundant uncontradicted evidence that the belief which we have shown to be inconsistent with the belief that a preference was being received was actually entertained in good faith by the banks and was the natural result of fraud and deception practiced upon them.

As we understand the position of the other side, it is not claimed that the defendant banks had actual knowledge or belief that they were receiving an unlawful preference. The contention is that such knowledge or belief must be imputed to them, first, because of the two sets of bills of lading representing the cotton in question, second, because of the alleged knowledge by the banks of the insolvency of Steele, Miller and Company, and third, because of so-called suspicious circumstances.

The existence of one of the sets of bills of lading,

the custody bills, was not known to the banks until their arrival in Havre on April 26th, in the case of the Societe Generale, and on May 3rd and 7th in the case of the other banks. Knowledge that Steele, Miller and Company had suspended payment did not reach Havre until April 29th and then no facts in regard to their real financial condition were known. The alleged suspicious circumstances did not exist prior to April 26th.

Now if the transfer took place on or prior to April 26th it is unnecessary for the Court to consider the grounds relied upon to show reasonable cause to believe. A transfer cannot be avoided because of what the transferee came to believe subsequent to the transfer. We maintain that—

(1) The transfer took place by operation of the law of appropriation on March 23rd in the case of the Societe Generale and on April 6th in the case of the other banks, or at least on the dates when the previous appropriation was perfected by the delivery of the cotton to the ocean carrier. This delivery took place on April 15th in the case of the Societe Generale and, in the case of the other banks, at various dates not later than April 25th.

(2) The transfer took place irrespective of the doctrine of appropriation, when Steele, Miller and Company parted with the *jus disponendi* and lost the possession of and title to the property, so that it was beyond their control and not subject to seizure by their creditors. This took place when the cotton was delivered to the ocean carrier and certainly when the endorsed bills of lading were forwarded, about April 15th in the case of the So-

ciete Generale, and in that of the other banks at various dates prior to April 26, and in possibly two instances on April 26th.

The proposition contained in (1) has been sufficiently discussed under the heading IV of this brief. We shall now take up proposition (2).

The cotton in question was intended for the defendant banks. Mr. Linde so testifies. It was intended as a performance of the obligations incurred when the drafts were drawn, which obligations were to transfer to the banks title to the cotton. For this reason the cotton in question was divided into lots and marked to correspond identically with the cotton described in the drafts and in the documents attached thereto. The cotton was acquired and brought to New Orleans for the purpose of performing the obligations due directly to the drawee banks to transfer and deliver to them the title to the cotton. The whole history of the affairs, the rights and obligations of the parties, all compel the conclusion that Steele, Miller and Company had no intention to reserve title in themselves after they had endorsed and mailed the custody bills of lading. And their intention is in accord with the legal effect of their acts. Delivery of the goods to the carrier and mailing of the endorsed bills of lading put an end to the *jus disponendi* in Steele, Miller and Company. They could not thereafter regain possession. No creditor of theirs could levy on the cotton.

We call attention to the following pertinent authorities:

> "It is necessary that the bill of lading be delivered in order to pass the goods, and an endorsement without delivery will not suffice. But put-

ting in the post office, addressed to the indorsee or to another for him, would constitute a valid delivery."

II Daniels on Negotiable Instruments (5th Ed.), Sec. 1743.

In the case of *Fetter* v. *Field*, 1 La. An., 80 (pp. 83-84), it was held that, from the date of the mailing of the bill of lading, the goods ceased to be in the possession or control of the shipper, and hence, were not subject to seizure on shipboard before departure of the vessel at the suit of one claiming a vendor's lien against the shipper.

So, in *Flash Lewis & Co.* v. *Schwabacher & Co.*, 32 La. An., 356, the Court said that it had been frequently decided in Louisiana that the creditors of a shipper could not seize goods after he had lost control and possession by delivery of the goods to a carrier and remitting the bills of lading therefor to the consignee.

It is horn-book law that a negotiable bill of lading represents the property, and the delivery of a bill of lading, indorsed in blank, constitutes a delivery and transfer of the property; that delivery to the common carrier for transportation to the vendee is a delivery to the vendee's agent and equivalent to a delivery to the vendee himself. The statutes and jurisprudence of Louisiana, which are in accord with the general law, are to the effect that the transferee of a negotiable bill of lading is the possessor and owner of the goods with full dominion over them. *The Bank* v. *Meyer & Co.*, 43 La. An., 1; *Scheuermann* v. *Monarch Fruit Company*, 123 La. Rep., 55; *Hardie* v. *Vicksburg S. & P. Ry. Co.*, 118 La. Rep., 253.

If, in the case of *Lovell* v. *Newman* (192 Fed., p. 758), the trustee was unsuccessful in his argument that the bankrupts retained the title to and *jus disponendi* of the cotton because they retained the genuine bills of lading made to their order, how can the trustee here hope to succeed in his argument that, under like circumstances, the title to and *jus disponendi* of the cotton still remained in the bankrupts, *after* they had endorsed and parted with the genuine bills of lading?

Substituting banks for "spinners" the following quotation from *Lovell* v. *Newman* (p. 758), is directly applicable:

> "In the present case there are no intervening rights of third parties; the contest being between the bankrupts and their trustee on the one hand and the spinners on the other. In the absence of the bankruptcy of the parties, what would have been the attitude of the bankrupts? Could they have recovered the cotton or its value from the spinners? They had once been paid full value, and it would be shocking to the sense of justice to suppose that they could have enforced a second payment. If parties by their own fraudulent conduct may be estopped, the application of the doctrine would effectually cut them off from asserting that they had not delivered the cotton in pursuance of their solemn contracts."

The above conclusion was reached independently of the operation of the law of appropriation. For, immediately after the words quoted above, the Court declared that it might go further, and that it was clearly of the opinion that the delivery of the cotton to the carrier

vested ownership in the spinners upon the theory of an intended appropriation.

It matters not that the bills of lading were addressed to Scheuch and Company for delivery to the banks. Scheuch and Company's possession was for the banks and enured to their benefit from the time such possession began. Steele, Miller and Company owed the cotton directly to the banks. They were, moreover, under obligation to Scheuch and Company to perform their obligations in the premises to the banks, and Scheuch and Company had guaranteed the performance of such obligations. There is not a particle of evidence to support the contention that the intention of Steele, Miller and Company was to part with the title and possession in favor of Scheuch and Company and not of the banks.

In *White* v. *Pollock,* 117 Mo., 467, 22 S. W., 1077, 38 Am. St. Rep., 671, the opinion says:

> "The delivery [of a deed] need not be to the grantee in person. A deed delivered by the grantor to a third person to be delivered to the grantee, and by such third person delivered to the grantee, will constitute a good delivery, though the grantor is dead at the date of the last delivery; for the delivery takes effect by relation as of the date when first made to the third person. In such cases it should appear that the grantor parted with all dominion and control over the instrument, intending it to take effect and pass title as a present transfer."

To the same effect is *Bury* v. *Young,* 98 Cal., 446, 33 Pac., 338, 35 Am. St. Rep., 186; and the opinion goes further to hold that when a deed is given a third person to be delivered to the grantee after the grantor's death and the circumstances surrounding the transfer show that

the grantor intended to surrender his control over the instrument, evidence that he afterwards executed other deeds purporting to convey the same property, and that he also ordered the depositary to restore the deed, is incompetent for the purpose of showing what his intentions were in transferring the deed to such depositary.

To say that the bills of lading were mailed to Scheuch and Company as agents of Steele, Miller and Company and that as long as thhe bills of lading were in the possession of Scheuch and Company they were in the possession of Steele, Miller and Company and subject to their control, is an utterly untenable proposition. In the first place it is not consistent with the allegations of the bill, which are to the effect that the bills of lading were transmitted for the purpose of making a preferential transfer either to Scheuch and Company or to the banks or to both. In the next place, for Steele, Miller and Company to attempt in that way to retain title to or control over the cotton would be in violation of their obligations to Scheuch and Company as well as to the banks (*Heffner* v. *Gwynne-Treadwell Cotton Co.* (C. C. A.), 160 Fed., 638-9, and *Eichel* v. *Sawyer,* 44 Fed., p. 845); and both Scheuch and Company and the banks could have successfully resisted any attempted exercise by Steele, Miller and Company of any rights of ownership over the cotton.

It is idle to say that there was a conditional transfer only, *i. e.,* upon condition of return of the forged bills of lading and that failure to comply with the condition gives Steele, Miller and Company a right to revoke the transfer. It is a sufficient answer to say that this is not a suit to revoke a transfer on account of failure to per-

form conditions attached thereto. Again there is no proof that there was any such condition precedent; it was simply a request or desire to get back the incriminating documents. To insist upon their return as a condition precedent would have brought about the disclosure which was sought to be avoided. Finally, no court will give effect to a condition having for its sole object to conceal a fraud in order to keep the way open for further frauds.

We submit that after Steele, Miller and Company had performed their obligation to Scheuch and Company and to the banks by delivering the cotton to the carrier and mailing the bills of lading, they, from the moment of mailing, lost the *jus disponendi.* They were powerless to undo what they had done by forbidding Scheuch and Company to turn over the documents to the banks. Scheuch and Company were under a legal obligation to deliver the bills of lading to the banks and the banks could have compelled them to do so. Steele, Miller and Company could not have compelled Scheuch and Company to hold or return the bills of lading.

Hence, from the moment of mailing, the transfer took place irrevocably so far as Steele, Miller and Company are concerned, and whether or not the transfer is voidable depends upon the state of facts existing at the time of mailing. It is not pretended that at that time the banks could possibly have had any suspicion of a guilty knowledge.

But if all the foregoing contentions be decided against us there still remains an insuperable bar to the trustee's recovery and that is, that the banks were ignorant of the alleged transfer and were firm in the belief that the

original bills of lading were genuine and that they had long been in constructive possession of the cotton and were justly and exclusively entitled thereto.

Knowledge of Steele, Miller and Company's suspension of payment on April 29th would afford no knowledge or notice of the forgery of the original bills of lading or of the transfer of subsequently acquired cotton, nor would it alter the belief of the banks in respect to a title or right to the cotton, complete and perfect prior to April 29. *Hence, the sole reliance of the trustee for proof of the all-essential knowledge of the alleged voidable transfer is the existence of duplicate sets of bills of lading.* We hardly feel it necessary to enlarge upon the summary of the argument given in the Statement of the Case.

The case of the "Texas" cotton was not the first occasion of the existence of duplicating bills of lading. The same things had occurred with more or less frequency during the season of 1909-10. At the first occurrence in December, 1909, explanations were asked and Steele, Miller and Company replied that the object was to facilitate and expedite the movement of cotton at the time of congestion at the port of New Orleans and that the ocean carrier had been willing to issue custody bills without previous delivery of the outstanding through inland bills of lading because of their confidence in Steele, Miller and Company and in reliance upon their guarantee of the return of the outstanding bills. This explanation had been accompanied by a statement of Scheuch and Company that the custody bills had been received without any charges attached thereto, that Steele, Miller and Company were a responsible firm whose representations

could be relied on, etc. The explanations were confirmed by Linde, when he was at Havre in January, 1910, who explained how custody bills of lading would result in giving preferential movement to cotton covered thereby (pp. 201-204). These explanations, plausible in themselves, were rendered a thousand times more plausible by the frequent arrival and receipt of the cotton without any trouble.

That the banks were deceived, and believed that the custody bills represented the same cotton covered by the bills attached to the drafts, is testified to by every witness who has been examined on the subject, including Linde, who was produced and has been vouched for by the trustee. It was to the interest of the banks not to be deceived. Hence it cannot be said that when the explanations were first given the banks were purposely credulous in their own interest.

It cannot be said that the explanations were so transparently false that no sensible man should have believed them—first, because four sensible men did actually believe them; second, because one of the three expert bankers examined by the trustee, Mr. Breton, the only one to whom the facts were explained, declares he would have acted as did the French banks; and third, because, considering the hazy knowledge foreign bankers had on the subject, the explanations were plausible and well calculated to deceive. Moreover, it must not be lost sight of that at the time the explanaions were given it was to the interest of banks to suspect the truth. This is shown by the answer of Mr. Dubois to Interrogatory 18, quoted above. That they were believed is shown by the fact that the banks continued to accept drafts for large

amounts, and three out of the four Havre banks, during the season of 1909-10, increased the limits of their reimbursement credits.

Hence the appearance of the custody bills of lading covering the "Texas" cotton was an occurrence not out of, but in accordance with, the course of business between the parties. It would be natural for the banks to have the same belief in respect to them as they had had on previous similar occasions. There is, therefore, no good reason why the Court should not believe the sworn declarations of the representatives of the banks, that they continued to believe that the custody bills represented the same cotton as the bills of lading annexed to the drafts and that the sole purpose and effect of the custody bills was to facilitate the movement of the cotton through the port of New Orleans. If this be true, they were entirely ignorant of the fact that they were receiving good bills for bad or that Steele, Miller and Company were thereby intending to give them a preference by transferring to them cotton not covered by their original bills but subsequently acquired.

But it is said that the banks ought to have suspected something because at the time of the arrival of the custody bills, Steele, Miller and Company were known to be in financial difficulties. What necessary or probable connection is there between knowledge on April 29th, of that firm's suspension of payment and their forgery of bills of lading several months before? We don't see any connection. Certainly such knowledge as the banks had at the time of Steele, Miller and Company's financial condition cannot justify the Court in holding, in disregard

of their positive testimony, that they should have suspected the frauds of which they were the victims.

Again it is said that the failure of Knight, Yancey and Company and the subsequent disclosures should have led the banks to suspect something when they saw the duplicating bills of lading. This case is to be determined, not by what trustee's counsel calls "the world's knowledge," but by the evidence in the record. The record is singularly barren of proof as to what disclosures followed the Knight, Yancey failure, how closely they followed it, etc. See answer of Dubois to cross-interrogatory No. 21 (p. 678). The Havre banks lost nothing by the Knight-Yancey failure. Moreover, Knight, Yancey and Company made no use of custody bills. In the presence of the uncontradicted testimony showing absence of actual knowledge or belief, the Court would not be justified, by reason of the Knight-Yancey episode, in imputing even a suspicion of the truth. If it were proven as a fact that, after the fraudulent practices of Knight, Yancey and Company become known, every European banker suspected every American exporter of cotton, it could not be said that this gave any banker any notice of the fraudulent practices of any exporter.

Finally it is claimed that the fact that, contrary to what was done in other cases, the original bills of lading were not returned on receipt of the custody bills of lading in the case of the "Texas" cotton, should lead the Court to suspect that the banks suspected something. But, if the Court must attribute to the banks a suspicion which they declare they did not have, we submit it should be merely *that they suspected, not that they were being made the recipients of an intended preference, but that*

they had been the victims of a fraud. The record, however, contains a reasonable explanation. The retention of the original bills was due to distrust of the continued effectiveness of Steele, Miller and Company's arrangements for delivery of the cotton without surrender of the outstanding through bills, and was not due to a belief that the retained bills were bogus. Why retain worthless forgeries? The banks had been led to believe that the issuance of the custody bills and the delivery of the cotton without production of the through railroad bills had been permitted by the steamship company on account of its faith in Steele, Miller and Company and in reliance upon the latter's guarantee. They naturally feared that the knowledge of the frauds of Knight, Yancey and Company and the rumors as to the solvency of Steele, Miller and Company might lead the steamship company to have less faith and less reliance on guarantees, and thus to insist upon the production of both sets of documents. So as a matter of prudence they retained both sets of bills of lading. See answer to cross-interrogatory 29 of Mr. Dubois and of Mr. Lysell to direct interrogatory No. 26 (pp. 713-714 and 594).

But it is said that Scheuch and Company, in transmitting the custody bills for the "Texas" cotton omitted to ask for the return of the through railroad bills. This may be significant of the fears and belief of Scheuch and Company. If the banks were chargeable therewith the trustee would not now be asking the Court to draw strained inferences; for the fraudulent practices of his firm were disclosed by Linde to Scheuch and Company in March, 1910. All the testimony is to the effect that this revelation was concealed from the banks. It is de-

clared by Scheuch and by Schilling, implied in the testimony of Linde, and is a necessary inference from all the facts and circumstances, that it was not intended that the confession to Scheuch and Company should be communicated to the banks. It is settled law, however, that, even if Scheuch and Company were acting solely as the agents of the banks, the latter would not be affected by knowledge of their agents under such circumstances. 31 *Cyc.*, pp. 1595-6; *American Surety Co.* v. *Pauly*, 170 U. S., p. 157; *Kettlewell* v. *Watson*, 21 Ch. Div., p. 687; *Cowan* v. *Curran* (Ill.), 75 N. E., p. 329; *Reinhard on Agency*, p. 356.

It has doubtless already occurred to the Court that the most that can be expected from the above circumstances relied upon to show knowledge of the transfer or reasonable cause to believe is that your Honors should suspect that the banks suspected or should have suspected something wrong. But a decision against defendants based in the most important element upon a suspicion of a suspicion would be *sui generis* among cases attacking preferential transfers.

In this connection, we may as well answer the argument based on sundry communications between Scheuch and Company and Steele, Miller and Company, on cablegrams, statements of Linde as to the banks' anxiety, etc. None of these things has been shown to be authorized by or known to the banks. They are irrelevant and *res inter alios actae.*

For instance, the impression which might be produced by the testimony of Mr. Linde, that the banks were in a constantly growing state of uneasiness and alarm from January, 1910, on should not be allowed any effect

against the banks. So far as the testimony has any foundation, it rests upon purely hearsay evidence. It is not based on any communications which Linde or Steele, Miller and Company had with the banks. Nor can any inference against the banks be drawn from the use of their names in letters or cables from Scheuch and Company to Steele, Miller and Company, in the absence of proof that they authorized or knew of the statements contained in such communications. Certainly must this correspondence be given no effect against the banks in view of Mr. Scheuch's declaration in answer to interrogatory 33, which reads as follows:

> "I hereby testify that the Havre banks have never been alarmed nor have they held meetings about Steele, Miller and Company and I did not give such information to Mr. Linde. The banks have asked us occasionally on which steamer such and such cotton would arrive, as sometimes the drafts were falling due and the cotton had not yet arrived, but therefore they had never been alarmed as the delay was nothing unusual to them. Scheuch and Company, when cabling or writing to Steele, Miller and Company to hurry forward certain cottons have several times mentioned the names of the banks, as if they had charged us to claim, but this has been merely done by Scheuch and Company because they believed that then Steele, Miller and Company would attach more importance to these letters or cables. In reality never any of these banks had charged us to do this" (p. 365).

It will appear from the depositions and exhibits that the remonstrances about delay in the movement of cotton and efforts to secure expedition in forwarding the same were continuous during the winter of 1910 and were

not peculiar to March or April. The desire to hasten the arrival of cotton drawn against has a too obvious and natural explanation than to justify its use as proof of an exclusive knowledge or even suspicion of facts which a month or two afterwards astounded the unsuspecting business world. The fact that Steele, Miller and Company had created the belief that obtaining port bills of lading would greatly expedite and facilitate the movement of cotton after it reached this port affords a natural explanation of the desire to have such port bills obtained to cover the delayed cotton. The general uneasiness following the disclosure of Knight, Yancey and Company's frauds explains the desire for proof that the cotton had actually been delivered to the ocean carrier; but it is very far from the beginning of proof of the existence of suspicion in respect to a transfer long before determined upon and executed by the transferrer without the procurance or knowledge of the transferee.

If it is the contention of the trustee that the shipment of the cotton and the issuance and forwarding of the custody bills of lading had any connection with the Knight, Yancey and Company failure, it is a conclusive answer to show that the cotton of the Societe Generale was delivered to the ocean carrier at New Orleans on April 15th, prior to the Knight-Yancey failure, and that the cotton of the other banks had been delivered to the inland carrier on April 6th, under the arrangements, which were afterwards carried out, for its delivery at the port of New Orleans to the ocean carrier and for the immediate forwarding of the ocean bills of lading therefor. If the alleged transfer was determined upon and wholly or almost wholly executed prior to the Knight-

Yancey failure, is it not illogical in the extreme to judge of its intention and character by reference to rumors and fears which did not exist until after the disclosures following the Knight-Yancey failure had become known? *It cannot be doubted that everything which was done would have been done just as it was done, if the Knight-Yancey failure and its consequent disclosures had never taken place.*

Suppose we admit, what has not been proven, that the air was full of rumors during the last week of April, 1910, and that there was a feeling of uneasiness in the minds of all who had parted with money on the faith of bills of lading for cotton not yet arrived. Such admission would be far from making out the beginning of a case of a fraudulent or preferential transfer concocted or connived at by the defendant banks. The banks did not thereafter ask Steele, Miller and Company to do anything nor did they do anything themselves nor did they believe that anything was necessary to be done to protect their rights or to secure for themselves preferential rights. As for Steele, Miller and Company, the cotton was already en route to Havre, having been started on its way pursuant to the intention formed when the drafts were drawn and in accordance with methods of business which they had adopted months before.

It must never be lost sight of that the acts of Steele, Miller and Company, alleged to constitute a preferential transfer, were done by them without the knowledge or procurance of the banks, were acts which they had from the start intended to do, which involved no change in the business methods which they had for a long time pursued, and had for their object and effect to give to the

banks no other or greater rights than what the banks originally contemplated were entitled to and had paid for, and always believed they were in the secure possession of.

This is an appropriate place to direct attention to a defect in the trustee's proof. He has failed to prove when Steele, Miller and Company acquired, assembled, marked and thus appropriated the various lots of cotton concerned in this suit. For aught that appears in this record, the cotton in question might have been on hand at the time of the drawing of the draft. The trustee cannot possibly ask the Court to hold that any more suspicion engendered by the existence of the duplicate bills of lading amounts to notice or constructive knowledge of any more facts respecting the cotton than the trustee has been able to prove in this case. Now, what are those facts?

In the case of the Societe Generale the genuine bills of lading under which the cotton actually moved to New Orleans are alleged to have been dated February 7, 1910, which corresponds with the date of the drafts, February 8th. It is alleged that they were fraudulently antedated, but no attempt was made to prove this. Would not knowledge that the cotton was shipped at the date of the drafts allay any suspicion which might otherwise have been aroused? It is alleged that on March 23, 1910, the cotton, already acquired, assembled, marked, etc., started on its way to New Orleans, but the trustee made no attempt to show how long the cotton had previously been in the possession of Steele, Miller and Company.

And so, in the case of the other banks, if they be

charged with constructive knowledge of all the facts which the trustee now knows and has been able to prove, they would not have known how long before April 6th the cotton had been acquired. It might have been in the hands of Steele, Miller and Company at the time of the drawing of the drafts. The trustee cannot argue on the assumption that Steele, Miller and Company did not own and possess the cotton at he time they drew drafts against it. Nor can he charge the banks with knowledge that the cotton was acquired subsequent to the drafts purporting to be drawn against it.

We submit that the trustee has completely failed to prove the absolutely essential fact that any of the banks knew or ought to have known even that the alleged transfer had taken place and *a fortiori* has he failed to show the existence of reasonable ground for belief in respect to the unknown transfer. Hence our confident belief that judgment must be for defendant.

The alleged knowledge of insolvency does not help the trustee. Knowledge of insolvency cannot create a belief in respect to an unknown transfer. If the banks believed that their original bills of lading were genuine, represented cotton shipped at the time, paid for by their drafts, then they must have believed that they had title to and constructive possession of the cotton from the dates of the bills of lading and that their just title and exclusive rights could not be affected by Steele, Miller and Company subsequently becoming insolvent.

We again submit that the trustee cannot recover, because upon the most essential part of his case, proof of guilty knowledge, he has not proved knowledge or notice

of the actual facts and has been forced to rely upon a suspicion.

The trustee's case may be thus generalized: The bankrupts had for a long time employed peculiar business methods which were fraudulent and therefore concealed from their customers. A mischance brought upon them sudden bankruptcy, followed by a discovery of their fraudulent methods. Relying upon circumstances incident to the peculiar business methods of the bankrupts and common to a long series of similar transactions, the trustee imputes to the transaction immediately preceding the bankruptcy a motive (intention to prefer) which the other similar transactions did not have, and charges that it was sufficient to afford notice or arouse suspicions which the other transactions did not create. To this contention, which involves an inference unsupported by evidence, we urge that the last transaction, which followed the regular course of business, should be regarded as having the same character as those which preceded it, both in respect to intention of one party and ignorance of the other party, and our contention is supported by the uncontradicted testimony of the parties to the transaction.

VI.

The Case of Paul Chardin.

The case of Paul Chardin in respect to the defense of want of reasonable cause for belief that a preference was intended to be given is on all fours with that of the Havre banks. If we thought there was anything in the

trustee's claims based on the recurrence of duplicating bills of lading, we would say Paul Chardin's case was stronger, because he had never before received duplicating bills of lading. In respect to the defense based on rights resulting from the doctrine of appropriation, his case, in our view of the law, is as strong as, and in what we understand to be the view of the trustee's counsel, is stronger than, the case of the Havre banks. For he was a purchaser for his own use of the cotton in question.

It is therefore only out of abundant caution that we present now a discussion of certain side issues or special features of the Chardin case.

In his bill of complaint the trustee alleges that on or prior to April 15, 1910, Steele, Miller and Company were indebted to Chardin in the sum of $72,557.12, being the aggregate amount of the drafts accepted by him in the month of January previous, to which drafts were attached spurious bills of lading purporting to represent 1,000 bales of certain described marks and lots; that thereafter, on or before April 6, 1910, Steele, Miller and Company acquired, assembled, separated into lots and marked 1,000 bales of cotton to correspond with the cotton described in the drafts and in the bogus bills; that said cotton was brought to New Orleans, delivered to an ocean carrier for transportation to Havre and negotiable bills of lading therefor were forwarded to Scheuch and Company for delivery to Paul Chardin to take the place of the forged bills, and "that the transmission of said port bills of lading to be substituted for the said fraudulent bills was done with the intent to prefer the said Paul Chardin," etc.

The bill asserts that Steele, Miller and Company have

actually transferred the cotton in question to Chardin in discharge of their obligations arising from the drawing of the drafts with spurious bills of lading attached and seeks to avoid this transfer on the statutory grounds as constituting a voidable preference.

Unlike the Havre banks, Chardin had no obligations d'importation with Scheuch and Company. He was not a bank assisting an importer of cotton by reimbursement credits. He was a merchant buying cotton for his own use, having the drafts therefor drawn on himself, thus saving or earning for himself the bank's commission.

As to the relations of Paul Chardin to the cotton described in the drafts accepted by him, we do not understand the testimony of Mr. Linde. He seems to admit that Chardin has all the rights which any of the defendant Havre banks have in respect to the cotton covered by the drafts drawn on them. This is sufficient for our purpose. But he seems to deny that as a merchant purchasing cotton Chardin had any right to demand the particular cotton which as a banker he was entitled to have delivered to him. On page 208 the witness said:

> "Q. I don't know that I clearly understand you. When Paul Chardin paid these drafts what did he expect to get in consideration for the thing?
>
> A. The bank commission.
>
> Q. Nothing else?
>
> A. Nothing else.
>
> Q. But the drafts were a good deal larger than the bank commissions?
>
> A. Why, certainly, but Paul Chardin acted as a bank in this transaction.
>
> Q. Do you mean to say that you did not sell any cotton to Paul Chardin?

A. Certainly, for deliveries.

Q. Suppose this cotton had come there, would it not have been turned over to Paul Chardin?

A. No, sir; it would have been turned over to the bank Paul Chardin.

Q. Would not Paul Chardin the bank turn it over to Paul Chardin the merchant?

A. No, sir.

Q. How would the merchant get the cotton that he bought?

A. Paul Chardin can never get the cotton drawn for against these drafts, but other cotton instead answering to description the delivery contract called for. The out-turn of this cotton might be fully good middling or fully middling while the delivery contract called for good middling. So this cotton would not have answered the description stipulated in the contract.

Q. Your theory is that Paul Chardin had a right to hold this cotton and was entitled to it only as a banker who had cashed drafts drawn for the price of the cotton?

A. In this transaction Paul Chardin was to be treated exactly on the same basis as the Banque de Mulhouse or the Comptoir d'Escompte de Mulhouse or the Societe Generale or any of those Havre banks.

Q. He had the title to the cotton by reason of his acceptance of the draft only, and not because he had purchased this particular cotton?

A. Yes, sir."

There seems to be a conflict between Mr. Scheuch and Chardin's representative, Mr. Riss, on the one side, and Mr. Linde on the other.

Mr. Riss testified, pp. 491 ffg., that Paul Chardin is an individual, owner of the commercial firm of Paul Char-

din of Paris with a branch office at Havre, and is engaged in the business of buying and selling all kinds of merchandise, the branch at Havre being engaged in the cotton import and commission business. Interrogatory 1. Paul Chardin has never had so-called engagements d'affairs with Scheuch and Company, but bought frequently through Scheuch and Company as agents of American cotton exporting firms, which they represented at Havre, including Steele, Miller and Company. Paul Chardin also bought from Scheuch and Company important quantities of cotton on the spot; this business was done by Scheuch and Company under their own name as merchants. Interrogatory 7. The aforesaid purchases which Chardin made from American shippers were effected on firm offers submitted by Scheuch and Company in the name of the American shippers, and it was always understood that these shippers had to make themselves pay for the selling price of the cotton by drawing documentary drafts on Paul Chardin. The documents were turned over on acceptance of the drafts, and by paying the drafts Chardin paid the purchase price of the cotton which he had bought. Interrogatory 8. A commission of three-sixteenth per cent. on the drafts was allowed. Chardin never had any knowledge of or interest in the contracts or arrangements which Scheuch and Company may have had with American cotton shippers, who were drawing drafts on him. He never had the intention to give and has never given any credit to any American shipper or to Scheuch and Company. He has never authorized drawing on his firm except for the amount of merchandise which he had bought for his own account from sellers and as a means of payment of the

purchase price in execution of the contracts. Interrogatory 10. This includes Steele, Miller and Company. Interrogatory 12.

He makes the same declarations as do the representatives of the Havre banks in respect to his belief in the genuineness of the bills attached to his drafts, that he thereby acquired possession of and full dominion over the cotton, his ignorance of the fraudulent practices of Steele, Miller and Company, etc. He states the receipt of the custody bills of lading, seven on May 3rd and three on May 7, 1910, and that the originals have never left the possession of Paul Chardin and are still in his possession and control. Interrogatory 16. The issuance of these custody bills were without the knowledge of Paul Chardin, who believed that they represented the same cotton as had been shipped under the original bills, and was in entire ignorance of the acts of Steele, Miller and Company in subsequently acquiring, marking, shipping, etc., the cotton in question. Interrogatory 17. He testifies in like manner, as do the directors of the Havre banks, as to the ignorance of Paul Chardin concerning the financial affairs of Steele, Miller and Company and concerning any intention of theirs, to give Chardin a preference; that when Chardin acquired the custody bills he did not know or believe that he acquired another interest or right in or to the cotton purporting to be covered thereby in addition to what he believed he already had as the acceptor of the ten drafts and the owner of the through bills of lading attached thereto; but he believed that the delivery of the custody bills of lading was only a continuation of the operation which consisted from his side in the purchase of the 1,000 bales of cot-

ton and the acceptance of the documentary drafts drawn on him against this cotton by Steele, Miller and Company. Interrogatory 21.

The knowledge which Chardin had since April 29th of Steele, Miller and Company's suspension of payment did not effect his perfect belief and confidence when he received the custody bills of lading, on May 3rd and 7th, in the solidity of his rights on the 1,000 bales of cotton resulting from the acceptance of the drafts with the through bills of lading attached, because he believed the custody bills represented the same cotton of which he had paid the purchase price and that he alone had the right to receive the same on its arrival at Havre. (Interrogatory 23.)

The 1,000 bales of cotton per steamer "Texas" were forwarded by Steele, Miller and Company to Chardin, not in virtue of a "credit de reimbursement" which Chardin had opened to them as their bankers but in fulfilment of certain contracts of sale. The drafts never had any other reason than to settle the purchase price. "Therefore Paul Chardin expected the 1,000 bales of cotton as the buyer of it and he considered himself as such." (Interrogatory 27.)

The commission charged by Chardin on the drafts in question are such as all Havre cotton merchants customarily charge who make it a rule to have drafts drawn on themselves by American shippers against cotton bought for their own account. (Cross-Interrogatory 4.)

In his answer to cross-interrogatory 25, the witness said:

> "On account of the urgent needs for cotton, which Paul Chardin had, I asked Scheuch and

> Company personally if they could not oblige me in delivering to Paul Chardin some cotton from their stock instead of the cotton of Steele, Miller and Company, which was arriving slowly and as Scheuch and Company accomplished this desire it happened that on arrival of the cotton shipped by Steele, Miller and Company to Paul Chardin it went definitely into the hands of Scheuch and Company personally in exchange of the merchandise which they had advanced to Paul Chardin for their own account as merchants."

In the next interrogatory he shows that Chardin's contracts of purchase from Steele, Miller and Company for monthly deliveries which were drawn against, aggregated 6,000 bales. While Chardin paid Steele, Miller and Company for all this cotton, only 4,400 bales arrived at Havre. Of the balance, 1,000 bales, purchased under the contract cipher "Geof," is the 994 bales now in suit and 600 bales is cotton which is altogether missing. And in his answer to cross-interrogatory 28 he says that, while Chardin was not obliged to accept any kind or grades of cotton which Steele, Miller and Company might choose to deliver, he always believed that the drafts were made against cotton which Chardin had to receive against the delivery contracts.

> "If Scheuch and Company would not have been willing or able to advance to Paul Chardin in order to oblige him some of their spot cotton, then Paul Chardin would have been bound to await the arrival of the cotton shipped to him by Steele, Miller and Company."

He was not aware that Steele, Miller and Company had a stock of cotton at Havre, but he remembers only

that Scheuch and Company as merchants and under their own name had cotton for sale with the various Havre spot brokers and he had bought many times spot cotton from Scheuch and Company. (Cross-Interrogatory 30.) Chardin never had any arrangement with Scheuch and Company for account of Steele, Miller and Company under which his acceptances had to be reimbursed by cotton of the stock at Havre of satisfactory grades. On the contrary the shipments made by Steele, Miller and Company against drafts on Chardin had to be of cotton in conformity with cotton which Chardin had bought to be delivered against the contracts. There was no contract or agreement in virtue of which Chardin sometimes got a loan or advance of cotton from the stock of Scheuch and Company. Each occasion he addressed himself personally to Scheuch and Company asking the loan or exchange as a favor. (Cross-Interrogatory 31.) He declares that "the advancing of some spot cotton by Scheuch and Company as carefully explained under 25 and 31 of this cross-interrogatory has been made by them (Scheuch and Company) under their own name as merchants and not at all as agents of Steele, Miller and Company." (Cross-Interrogatory 32.)

Mr. Scheuch, in his testimony, corroborates Mr. Riss in all essentials. See his answers to direct interrogatories 29, 30 and especially 31. In the course of his answer to Interrogatory 31 he said:

> "It happened that the cotton which Steele, Miller and Company had shipped and drawn on Paul Chardin, did not arrive in time to make the delivery at the time Paul Chardin needed his cotton purchased, and in these instances Paul Chardin asked Scheuch and Company either verbally or

by phone, if they could oblige him in delivering some of their spot cotton instead of waiting until the cotton, which was shipped to him by Steele, Miller and Company would arrive. As Scheuch and Company wanted to oblige Paul Chardin and as they also wanted to avoid any claim for penalty by Paul Chardin against Steele, Miller and Company on account of the delay in delivery, they agreed to the demand of Paul Chardin and delivered to him cotton from their stock warehoused at Havre, in exchange of the cotton in course of shipment to Paul Chardin. Scheuch and Company were not bound at all to do this, and if they would not have had a stock of cotton at Havre, wherein to find the suitable cotton for Paul Chardin according to the contract conditions with Steele, Miller and Company and him, Scheuch and Company would not have been able to advance any cotton to Paul Chardin. These transactions have been special transactions between Paul Chardin and Scheuch and Company acting as merchants for their own account" (p. 363).

In the course of his answer to Cross-Interrogatory 22, he said:

"Referring to the transactions of Paul Chardin with Steele, Miller and Company, I can only repeat that the understanding of Paul Chardin and ours was such, that Steele, Miller and Company had to draw only on Paul Chardin against cotton, which was to be delivered against those delivery contracts, as otherwise Paul Chardin would not have allowed those drafts, as he did not intend to open any other credit for reimbursement to Steele, Miller and Company. The transactions, which took place later on account of the delay in shipping through cotton drawn for, were merely transactions between Scheuch and Company and Paul Chardin to

> oblige the latter and they would not have been possible if Scheuch and Company would not have had a big stock of cotton at Havre, in which event Paul Chardin would have been forced to await the cotton shipped to him. If Steele, Miller and Company and Mr. Linde have understood these transactions in another way, then they have made a mistake, which I regret" (pp. 382-3).

The differing views of Mr. Linde and of Mr. Scheuch and Mr. Riss do not affect the main essential facts upon which rest Paul Chardin's defense against this suit, wherein the trustee seeks to set aside as a voidable preference the shipment of the 1,000 bales, reduced by shortage to 994 bales. There is still lacking proof of an intention to give a preference and proof of reasonable ground for belief that a preference was intended. If he is not entitled to the cotton as actual purchaser, he is entitled to it as banker accepting drafts drawn against it.

That Scheuch and Company and Riss are correct and Linde in error, as to the cotton covered by the drafts on Chardin being the cotton to be delivered to him under his contracts of purchase, becomes clear when we consider that Scheuch and Company had no free cotton of Steele, Miller and Company to deliver to Chardin. The cotton consigned to Scheuch and Company was all covered by drafts on the banks for its full value and was in their possession and control until sold and the proceeds turned over to them. Scheuch testifies that his firm never had any cotton of Steele, Miller and Company without having previously paid its full value. (Answer to Cross-Interrogatory 23, p. 383.)

Hence, when, on account of the delay in the arrival

of the "Texas" cotton, Riss testifies that, as a matter of favor not of right, he obtained a loan of a corresponding number of bales from Scheuch and Company acting as merchants and importers of cotton, and when Scheuch testifies that he advanced the cotton out of his stock of spot cotton as a favor to a valued customer and to avoid claims against Steele, Miller and Company, they should be readily believed. And the advance or loan of the cotton becomes a matter which concerns only Chardin and Scheuch and Company and cuts no figure in this case. It, of course, does not discharge or affect in any way Steele, Miller and Company's obligations to Paul Chardin. We do not understand that any such claim is made by the trustee. It would be inconsistent with the allegations of the bill of complaint and with the nature of this suit, which is one to set aside a voidable transfer, not to recover a payment made in error. No one would be so foolish as to contend that Chardin had lost 1,000 bales of cotton by accepting an advance loan of cotton or that Scheuch and Company has lost 1,000 bales by making the loan, and that the bankrupts, by reason of this exchange of courtesies, had been presented with 1,000 bales.

In the event, that further particulars are desired in respect to the cotton purchases of Paul Chardin from Steele, Miller and Company, we call attention to the following:

By contracts made verbally with Linde in the Spring or Summer of 1909, followed by written confirmations through Scheuch and Company, Chardin arranged for the purchase of several thousand bales of cotton to be delivered gradually, all of the same grade of good

middling, g. c. The deliveries under these contracts aggregated from 1,000 to 2,000 bales for each of the months of November and December, 1909, and January, February and March, 1910. To provide cotton for such deliveries, Steele, Miller and Company, up to the time of their failure, had drawn against Chardin on account of the cotton so sold as follows—On October 4, 1909, for 1,000 bales—Contract cipher "Time"; on October 11, 1909, for 1,000 bales—Contract cipher "Billy"; on November 10, 1909, for 1,200 bales—Contract cipher "Hyatt"; on December 20, 1909, for 1,200 bales—Contract cipher "Fita"; on January 27, 1910, 1,000 bales—Contract cipher "Geof;" on March 24, 1910, for 600 bales—Contract cipher "Kaine." Of the above 6,000 bales the contracts have been performed except for the last mentioned 1,600 bales, 1,000 bales of which is involved in this suit and 600 bales have never turned up. Drafts for the value of the entire 1,600 bales have been drawn on Chardin and paid by him.

See answers of Chardin to Cross-Interrogatories 15 and 26.

The confirmation notes of Scheuch and Company in reference to the above contracts, in each contract one to Chardin and one to Steele, Miller and Company, were made Exhibits 4 to 13 of Scheuch's answer to interrogatory 31. Of these numbers 4 and 5 and 12 and 13, by stipulation between counsel, have been offered as types of the others. Steele, Miller and Company's confirmations are annexed to the same interrogatories as Exhibits 14 to 18, of which numbers 14 and 18 have been offered as types.

According to the testimony of Mr. Scheuch and Mr.

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Riss, Steele, Miller and Company were to draw against Chardin only for cotton deliverable under these contracts, as Chardin was not doing a banking business, had no engagements d'importation with anyone, and authorized drafts only in payment of cotton purchased for his use. See previous quotations and references to the depositions of those witnesses and also Scheuch's answer to interrogatory 31. The drawing price was subject to be changed and definitely fixed during the month of delivery. On September 30, 1909, Scheuch and Company wrote to Steele, Miller and Company to try to arrange to draw on Westphalen and Company and Paul Chardin only against cotton which might be applied to their delivery contracts, and Steele, Miller and Company replied, November 29, 1909, that they thought that Scheuch and Company would be able to make deliveries to Chardin out of the cotton drawn on them. Scheuch's Exhibits 20 and 23, pp. 428 and 430. It is fair to presume that if the cotton drawn against had been shipped at the time of the drafts it would have sufficed to keep cotton on hand sufficient for the monthly deliveries. See Steele, Miller and Company's letter of November 10, 1909, Scheuch's Exhibit No. 22. The unforeseen fraud of Steele, Miller and Company prevented this and caused the borrowing from Scheuch and Company's stock of spot cotton. This borrowing was no more contemplated by Chardin than the fraud which necessitated it.

VII.

The Defense of Estoppel.

While the defense of estoppel in a suit to set aside a voidable preference, may not apply to acts of the bankrupts which constitute the alleged voidable transfer or to any fraud against general creditors participated in by the defendant, there is no reason why it should not be applied to any acts of the bankrupts which go back of the alleged voidable transfer and affect the nature of the original transactions and the rights and obligations arising therefrom. Nor is there any reason why estoppel should not prevail against a trustee in bankruptcy as to deception and fraud of the bankrupts which actually misled the creditor into an erroneous belief as to the nature or location of the property or of their rights, and the like.

As thus understood, what this Court said in *Lovell* v. *Newman and Son,* 192 Fed., 760-761, is applicable to this case, and is fully supported by the decisions of this Court therein cited.

And we may also rely upon the case of *Zartman* v. *First National Bank,* 216 U. S., 138, and claim that, if a trustee cannot treat the bankrupt's fraud as an asset, neither can he use such fraud as a weapon of attack. This has special reference to the monstrous proposition in connection with the use of duplicating bills of lading that, because the banks were not shrewd enough to escape being deceived by the deceptive explanations of Steele, Miller and Company, that should be used against them as a basis for imputing notice or knowledge. We say the trustee is estopped from denying the truth of the explanations given as to the nature and purpose of the

custody bills of lading, provided, of course, the banks, in good faith, believed the explanations.

The defense of estoppel was specially pleaded. We quote from paragraph 11 of the answer of the Bank of Mulhouse, as follows:

> "It avers that by the procuring or issuing of said alleged spurious through railroad bills of lading for said cotton and forwarding the same to it with said drafts attached and accepting the proceeds of said drafts Steele, Miller and Company warranted its title to said cotton and that the same had been delivered to the carrier for this defendant and is estopped to deny the same and is estopped to deny this defendant's right and title to the cotton after the same was selected, marked and appropriated as aforesaid, and this estoppel operates equally against the complainant trustee and the general creditors of Steele, Miller and Company and all other persons who are disputing this defendant's rights to said cotton."

We do not believe that this Court will get as far as the defense of estoppel. For this reason we shall content ourselves with the above reference to the reasoning and authorities found in *Lovell* v. *Newman and Son.*

It is believed that the authorities referred to will be found to fully support the two propositions: (1) that Steele, Miller and Company in the forged bills of lading impliedly warranted their title to the cotton marked as therein stated; therefore their subsequently acquired title enured to the benefit of the defendants, and (2) that Steele, Miller and Company and their trustee are estopped by the misrepresentations in the forged bills to deny that the bills were valid, or that the cotton was shipped as therein stated, or that the cotton in suit is the cotton there described.

We call attention also to the recent case of *Aldine Trust Co.* v. *Smith* (C. C. A.), 182 Fed., 449. The syllabus in that case correctly summarizes the facts and the conclusions of the Court as follows:

> "A bankrupt corporation, which had contracted as a sub-contractor to furnish and set tile in certain buildings under construction and had delivered the tile at the buildings, borrowed money from a trust company and as collateral security assigned the money 'due for material furnished' from the contractors. It also represented in good faith that the tile had been delivered to the contractors and that the money therefor was due it. Before the tile had been set, it became bankrupt, and its trustee claimed the tile, which were then sold to the contractors by agreement of the parties. *Held,* that, having obtained the loans on the representation that the tile had been sold, both the bankrupt and its trustee who took in its right were estopped in equity as against the trust company to claim the tile or their proceeds."

The *Aldine Trust Co. case* is fully supported by *Fourth Street Bank* v. *Yardley,* 165 U. S., 634, p. 653.

The doctrine of estoppel applied in the case of *Lovell* v. *Newman and Son* would have been just as applicable if custody bills of lading in that case had been mailed instead of being retained by the bankrupts. It is not claimed in either case that there was any fraud or collusion between the bankrupts and claimant at the time or in respect to the matters covered by the estoppel, *i. e.,* the issuance of the original bills of lading as genuine and the representations that the cotton was shipped at that time.

VIII.

Relations of Scheuch and Company With the Defendant Banks and With Steele, Miller and Company. Their Losses Due to Frauds of Steele, Miller and Company, etc.

We shall now discuss briefly the relations of Scheuch and Company with Steele, Miller and Company and with the defendant banks. As we understand the case, we do not believe it will be necessary for the court to examine very minutely into the nature of the business of Scheuch and Company; but, in order not to leave undiscussed any matter which may, in the course of the Court's consideration of the case, come to be important, we have concluded to discuss under this heading matters which, while covered by the evidence, have not heretofore been considered as of any importance.

Moreover, Scheuch and Company are defendants in this case, made defendants in order that their rights, if any, may be adjudicated upon. The trustee cannot recover unless he shows a right or title superior either to that of Scheuch and Company and that of the banks, *i. e.*, of both combined. While we believe that the banks' case is strong enough to stand alone, still if the rights of Scheuch and Company can aid in defeating the trustee's claim to the cotton, we propose to direct attention to those rights, so far as they enure to the benefit of the banks.

The nature of the business of Scheuch and Company and their relations with defendant banks are dealt with in the depositions of the directors of the Havre banks. We shall summarize the testimony of Mr. Dubois of the Societe Generale.

Scheuch and Company were a commercial firm at Havre organized in 1901 and engaged in the cotton business. They enjoyed an excellent reputation and were successful in business down to the failure of Steele, Miller and Company. They were accredited in 1909 with a capital of 700,000 francs. They conducted their business on two distinct lines, viz:

> 1st. "They acted as agents representing certain number of American export houses. As agents they tried to find in Havre buyers of cotton CIF for those houses, and in consequence they did not want any bankers for those transactions as they acted merely as intermediaries between the American sellers and the Havre buyers; only buyers have recourse to bankers.
>
> 2nd. "They acted as importers of cotton on their own account, and that quality, for their personal transactions they were obliged, as all other importers, to secure the help of one or more banks. Having had good results from this importing business, M. M. Scheuch and Company continued to increase their business on these lines from 1906 to 1910, in consequence their financial means increased likewise. They still continued their agency business as that brought them considerable profits" (p. 664).

The bank opened with Scheuch and Company credits for their importations the same as it did for other merchants in Havre. Against documents, bills of lading, insurance policy and invoice, for so many bales, marked so and so, the bank accepted sixty or ninety days drafts drawn by American exporters "for full value of the cotton mentioned." Scheuch and Company paid the bank five per cent. of the amount of the draft to cover it

against out-of-pocket expenses such as warehousing, insurance, etc., as might occur. On arrival of the steamers, the bank presented itself to the carrier as claimant of the cotton, made the customhouse entry therefor, and warehoused the cotton in its name. When the cotton was sold by Scheuch and Company, they paid over the money to the bank and received from it an order on the warehouse for the cotton. The bank gave its acceptance "only in exchange for full title deeds on the property." For protection against fall in price of the cotton future sales contracts were always booked in the name of the bank for an equal amount of bales as had been imported with its assistance. (Answer of Dubuis to Interrogatory 8, p. 666.)

The bank "was absolutely confident that the drafts accepted under the conditions conveyed to them the full property rights in the cotton described in the drafts and in the documents attached to these drafts," and but for such confidence in obtaining by such acceptance "the full right, possession and control of the cotton described," it would not have authorized or accepted the drafts. (Interrogatory 9.) The bank has no interest in or knowledge of the contract or arrangements of Scheuch and Company with cotton exporters. Havre merchants do not communicate such matters to their bankers. On principle the bank does not open credits for foreign exporters of cotton and has never intended to do so. It opens such credits only for merchants in Havre according to conditions settled with them separately. The arrangement with Scheuch and Company called for an accepting commission of ¼ per cent. on drafts accepted, and a further commission of five francs per fifty bales

monthly on future sales contracts. (Interrogatory 10.) The bank knew Steele, Miller and Company only by name and as one of the American firms exporting cotton to Havre. It never had anything to do with the firm or its members except to receive the usual advices of drawings. (Interrogatory 11.) It had no knowledge concerning the business relations or dealings between Scheuch and Company and Steele, Miller and Company. (Interrogatory 12.)

In 1910 Scheuch and Company lost largely through the failure of Steele, Miller and Company. The non-shipment of the 1,550 bales of cotton, representing 600,000 francs, absorbed nearly their whole capital. If to this is added the 2,494 bales of "Texas" cotton, Scheuch and Company are hopelessly ruined. (Interrogatory 27.)

The bank limited its acceptances for account of Scheuch and Company in the same way as it limits its acceptances for other clients. Scheuch and Company knew of these fixed limits, and always respected them. The bank never had occasion to make any observation on the point or to refuse any draft drawn for account of Scheuch and Company. In other words, the credit opened in favor of Scheuch and Company was never withdrawn or reduced. It stopped automatically when the limit was reached and opened again when cotton arrived and outstanding drafts were satisfied. (Cross-Interrogatories 13 and 17. See also testimony of Linde, page 242.)

It follows from the foregoing that the Havre banks dealt with Scheuch and Company and Scheuch and Company dealt with them, not as agents of Steele, Miller and

Company, but as merchant importers buying cotton from American exporters.

According to the deposition of Mr. Riss, Paul Chardin dealt with Scheuch and Company both as agent of Steele, Miller and Company, selling the latter's cotton, and as merchant importers of cotton having supplies of spot cotton of their own for sale. As a matter of fact the sale of the Steele, Miller and Company cotton with which we are concerned seems to have been arranged directly with Mr. Linde, the confirmatory notes only passing through Scheuch and Company. The extracts from Mr. Riss's testimony contained in the discussion in the case of Paul Chardin sufficiently disclose the relations of Chardin with Scheuch and Company.

In his deposition Mr. Scheuch says that Scheuch and Company started in 1901 with a capital of 50,000 francs and the business of the firm prospered and rapidly increased. They were the agents of many first rate American shippers of cotton, besides Steele, Miller and Company, a partial list of which is given. They did a commission business as agents or as merchants. They handled during the season of 1907-8 about 90,000 bales of cotton, during the season of 1908-9 about 155,000 bales, and during the season of 1909-10 about 130,000 bales. Their profits were left in the firm and its capital increased every year, so that the capital would have been about 1,000,000 francs in 1910, if the failure of Steele, Miller and Company had not occurred. As all their fortune was left in the firm, the members thereof have lost all they had and still owe large sums to the banks at Havre which extended them credit for their importations. (Interrogatory 2, pp. 340-1.)

Scheuch and Company did not sustain any substantial loss by the failure of Knight, Yancey and Company, but by the failure of Steele, Miller and Company they have lost at present over 1,400,000 francs, *i. e.*, their accumulated capital and about 700,000 francs besides. Mr. Scheuch says:

> "I call the special attention to this fact, because the testimony of Mr. Linde looks as if Scheuch and Company were not losing much by the failure of Steele, Miller and Company, which is a big mistake. Besides, it was impossible for Mr. Linde to give any approximate amounts concerning our losses, without having the accounts of all the dealings with Scheuch and Company in hands. I can only repeat that the firm of Scheuch and Company as well as Mr. Schilling and myself are completely ruined through the fraudulent practice of Steele, Miller and Company." (Interrogatory 3.)

Scheuch and Company first began to do business with Steele, Miller and Company in 1907. For the first two seasons they acted merely as selling agents, although they bought some cotton on their own account just as they did with all their American representatives. In the summer of 1909 Linde stated that his firm wished thereafter to do business on a consignment basis, and on a threat of Linde to establish a branch of Steele, Miller and Company at Havre, Scheuch and Company reluctantly consented to the change. This, of course, involved that Scheuch and Company should arrange in their own name and on their credit the necessary reimbursement credits with the Havre banks. What credits Scheuch and Company opened for themselves, the nature of the

arrangements, etc., have already been shown. (Interrogatory 4 and Interrogatory 5, pp. 342-5.)

The Bank of Mulhouse up to November, 1909, allowed 5,000 bales reimbursement credit, which was afterwards increased to 10,000 bales. The Societe Generale limited its reimbursement credits to 5,000 bales. That allowed by the Credit Havrais was increased at some time during the seasons of 1909-10 from 5,000 to 8,000 bales. The Comptoir d'Escompte de Mulhouse increased its limits during 1909-10 from 5,000 bales to 10,000 bales. (Interrogatory 6.) Steele, Miller and Company after September, 1909, until March, 1910, repeatedly wrote and cabled Scheuch and Company to increase their credit limits with the Havre banks, and when Linde was in Havre in January, 1910, he urged the same thing. (Interrogatory 11.) All this is not indicative of any intention or desire of Linde, who says he learned of the fraudulent practices of his firm in the fall of 1909, to protect or favor the Havre banks.

Throughout his testimony Mr. Linde refers to Scheuch and Company as the agents of Steele, Miller and Company; but neither the pleading nor the facts will permit the trustee to claim that Scheuch and Company occupy no other position than that of mere agents or employees of Steele, Miller and Company. Whether they are to be regarded as principals or as agents in any particular transaction depends upon the nature of the transaction. For instance, they were not acting as agents of anybody when they secured reimbursement credits with the banks. They were acting as agents of Steele, Miller and Company when they took part in the making of the sales contracts with Paul Chardin. They were acting as prin-

cipals when at different times they sold Paul Chardin spot cotton out of their own stock. They were acting as principals when they loaned Chardin cotton out of their own stock.

We now come to the misunderstanding between Scheuch and Company and Linde as to the taking up of drafts for 1,550 bales of cotton, the value of which was covered by drafts drawn on and accepted by the defendant Havre banks, but which was never shipped to them, and also to the 600 bales of cotton in respect to which Chardin was victimized as late as March, 1910. Mr. Linde's only reason for stating that the drafts for the 1,550 bales had been taken up was a statement from Scheuch and Company's office on which the drafts were referred to as "paid." Mr. Scheuch says that "paid" was a clerical error for "accepted." He further states with particularity and detail, in his answer to interrogatory 28, that these drafts were never paid for the very good reason that Scheuch and Company did not have on April 29, 1910, the very large sum, 600,000 francs, necessary to take up the drafts, nor did they have the cotton, which was never shipped. Scheuch and Company has annexed as Exhibit 3 a detailed account of their business with Steele, Miller and Company, covering some 43 pages, which shows that no such payments were made or could have been made. (See also their answer to cross-interrogatory 20.)

The 1,550 bales, which have nothing whatever to do with the "Texas" cotton involved in this suit, represent the losses the Havre banks have sustained in addition to the "Texas" cotton. In addition there are the 600 bales drawn for on Chardin which never reached him

and which represent a loss to that amount in addition to the cotton claimed by him in this litigation. The 1,550 bales are made up as follows:

350 bales drawn for on the Bank of Mulhouse.

1,000 bales drawn for on the Comptoir d'Escompte de Mulhouse.

200 bales drawn for on the Societe Generale.

Mr. Lysell, for the Bank of Mulhouse, Mr. Level, for the Comptoir d'Escompte de Mulhouse, and Mr. Dubois for the Societe Generale, all declare that the drafts were not taken up and the transaction represents so much dead loss to the banks. It will thus be seen that when these banks recover the "Texas" cotton now claimed by them, they will still be heavy losers by the frauds of Steele, Miller and Company.

Scheuch and Company never had any engagements d'importation with Paul Chardin. The firm's dealings with Chardin consisted either of sales to him by the firm as agents of American shippers or of sales to him by the firm as Havre merchants out of their stock of spot cotton (Interrogatory 30 and Cross-Interrogatory 9).

We ask that the judgment appealed from be affirmed.

Respectfully submitted,

GEORGE DENÈGRE,
JOSEPH PAXTON BLAIR,
VICTOR LEOVY,
Of Counsel for Appellees.

(23,808)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1914.

No. 227.

J. A. E. PYLE, TRUSTEE IN BANKRUPTCY OF STEELE, MILLER & COMPANY, APPELLANT,

vs.

THE TEXAS TRANSPORT & TERMINAL COMPANY, COMPAGNIE GENERALE TRANSATLANTIQUE, AND COMPTOIR D'ESCOMPTE DE MULHOUSE.

APPEAL FROM THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIFTH CIRCUIT.

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UNITED STATES OF AMERICA:

United States Circuit Court of Appeals, Fifth Judicial Circuit.

Pleas and Proceedings Had and Done at a Regular Term of the United States Circuit Court of Appeals for the Fifth Circuit, Begun on Thursday, November 21st, A. D. 1912, at New Orleans, Louisiana, Before the Honorable Don A. Pardee and the Honorable David D. Shelby, Circuit Judges, and the Honorable William B. Sheppard, District Judge.

J. A. E. PYLE, Trustee in Bankruptcy of Steele, Miller & Company,
Appellant,
versus
TEXAS TRANSPORT & TERMINAL COMPANY, COMPAGNIE GENERALE TRANSATLANTIQUE, and COMPTOIR D'ESCOMPTE DE MULHOUSE,
Appellees.

Be it remembered, that heretofore, to-wit, on the 10th day of July, A. D. 1912, a transcript of the record of the above styled cause, pursuant to an appeal from the District Court of the United States for the Eastern District of Louisiana, was filed in the office of the Clerk of the said United States Circuit Court of Appeals for the Fifth Circuit, which said transcript was filed and docketed in said Circuit Court of Appeals as No. 2390, as follows:

UNITED STATES OF AMERICA.

UNITED STATES DISTRICT COURT, EASTERN DISTRICT OF LOUISIANA, NEW ORLEANS DIVISION.

J. A. E. PYLE, TRUSTEE,

Appellant,

versus No. 14,241.

TEXAS TRANSPORT & TERMINAL COMPANY, ET ALS.,

Appellants.

Messrs. W. A. Percy,
J. A. Lamb and
Dufour & Dufour, For J. A. E. Pyle, Trustee, Appellant.

Mr. George H. Terriberry, For the Texas Transport & Terminal Company, and Compagnie Generale Transatlantique, Appellees.

Messrs. Denegre & Blair, For Comptoir d'Escompte de Mulhouse, Appellee.

APPEAL From the United States District Court for the Eastern District of Louisiana, New Orleans Division, to the United States Circuit Court of Appeals for the Fifth Circuit, returnable within thirty (30) days from the first (1st) day of March, A. D. 1912, at the City of New Orleans, State of Louisiana.

Extension of thirty (30) days' time from the return of the appeal, to-wit, from March 31st, 1912, granted by the Honor-

able United States Circuit Court of Appeals for the Fifth Circuit.

Extension of thirty (30) days' time from the return of the appeal, to-wit, from April 30th, 1912, granted by the Honorable United States Circuit Court of Appeals for the Fifth Circuit.

Time for filing the transcript of appeal in the Honorable United States Circuit Court of Appeals for the Fifth Circuit, extended to the tenth (10th) day of July, A. D. 1912, as per agreements of counsel, copied at pages 1332 and 1336, respectively, of the transcript of appeal in the case bearing the above title, and numbered 14,240 of the docket of the said United States District Court.

TRANSCRIPT OF APPEAL.

BILL AND EXHIBITS.

Filed August 18, 1910.

United States District Court, Eastern District of Louisiana.

J. A. E. PYLE, TRUSTEE,

versus No. 14241.

TEXAS TRANSPORT & TERMINAL CO., ET ALS.

To the Honorable the Judge of the United States District Court, Eastern District of Louisiana:

J. A. E. Pyle, a citizen of the State of Mississippi, suing herein as trustee in bankruptcy of Steele, Miller & Company, brings this his bill of complaint against the Compagnie Generale Transatlantique, a corporation created under the laws of the Republic of France, with its domicile in the City of Paris, France, the Texas Transport & Terminal Company, a corporation created under the laws of the State of New Jersey, but doing business in the City of New Orleans through W. H.

Hendren, agent, F. Scheuch & Company, a commercial firm composed of Fred Scheuch and Aubert Schilling, of Havre, France, and comptoir d'Escompte de Mulhouse, whom your orator avers is a corporation created under the laws of France, domiciled and doing business in the City of Havre, France, and the other persons against whom process is herein prayed; and thereupon your orator complains and says:

First. That Steele, Miller & Company, a partnership composed of L. C. Steele, J. H. Miller and C. H. G. Linde, was lately doing business in and had its principal place of business at Corinth, in the State of Mississippi, and within the Northern District of Mississippi; that the business of said firm of Steele, Miller & Company consisted of the purchasing and selling of cotton.

Second. That on May 4th, 1910, in the suit No. 123 entitled Knoop, Fabarius & Company, et al., vs. Steele, Miller & Company, in the United States District Court for the Northern District of Mississippi, application was made for an
2 adjudication in involuntary bankruptcy against said firm and for the appointment of a temporary receiver, to take charge of the assets of said firm pending the action of the court and pending the election of a trustee; that your orator, J. A. E. Pyle, was appointed by the Honorable Judge of the United States District Court for the Northern District of Mississippi, as temporary receiver in accordance with the prayer of said petition, and that your orator duly qualified as such, all of which will appear more fully from the petition and order filed in said cause and the oath and bond filed by your orator as temporary receiver in the said numbered and entitled cause, all of which are made part hereof as though fully and at length set forth herein, and will be produced at the trial of this cause.

Third. That on the 31st day of May, 1910, in the trial of said cause held in the manner and form prescribed by law, the said firm of Steele, Miller & Company was adjudicated a bankrupt, and on the 11th day of July, 1910, at the meeting of the creditors held pursuant to law, your orator was elected trustee of the said firm of Steele, Miller & Company, all of which will appear more fully from the decree of adjudication in bank-

ruptcy of the United States District Court for the Northern District of Mississippi rendered on the 31st day of May, 1910, in said cause entitled, Knoop, Fabarius & Co. vs. Steele, Miller & Company, No. 123 of the docket of the United States District Court for the Northern District of Mississippi, in bankruptcy, and by reference to the proceedings before the referee in bankruptcy and the order approving the bond of
3 your orator as trustee, which said proceedings are also made part hereof as though fully and at length set forth herein and which will be produced at the trial of the cause.

Fourth. Your orator shows that on or prior to the 15th day of April, 1910, Steele, Miller & Company were indebted to the Comptoir d'Escompte de Mulhouse in the sum of $7,120.45 and that said indebtedness arose out of the following transactions:

That said Steele, Miller & Company at a date to your orator unknown had adopted a fraudulent scheme of obtaining money, and in furtherance of which the said bankrupt firm did draw drafts for large sums of money and did attach to such drafts what purported to be through bills of lading of carriers for lots of cotton specifically described in such bills of lading, and thereupon the said Steele, Miller & Company received the money called for by such draft either by their sale or their acceptance and payment by the drawees; that the said bills of lading resembled in form and appearance the bills of lading issued by carriers at places from which Steele, Miller & Company, from time to time, shipped cotton over the lines of such carriers, but the bills of lading attached to such drafts did not represent cotton actually received and shipped by the carriers who, it was purported, issued them, but were spurious and forged bills of lading and in no sense represented cotton then in the possession of Steele, Miller & Company, or delivered to the carriers for transportation. Your orator further avers that the sale, negotiation and acceptance of drafts
4 with actual bills of lading for the cotton thereto attached, under the custom which involves the delivery of such bills of lading upon the payment of the drafts, was and is the usual and customary method by which sales of cotton were and are accomplished by persons engaged in such trade, and the purchases of cotton were and are accomplished by the purchase or acceptance and payment of such drafts with bills

of lading thereto attached; that, under the custom and practice of the cotton trade, such drafts were and are purchased or paid wholly on the security of the bills of lading thereto attached, and for the purpose of obtaining the cotton therein mentioned, and the purchase or acceptance and payment of the said drafts with the said bills of lading attached constituted the entire transaction between the parties, the bills of lading supposedly representing cotton which has passed into the carriers for delivery subject to the presentation of the bill of lading, and the payment and acceptance of the draft and the acquisition of the said bill of lading passing the muniment of title to the party who had paid or accepted the said draft.

Fifth. Your orator avers that on or about the 30th day of January, 1910, and within ninety days thereafter, the Comptoir d'Escompte de Mulhouse had become the acceptor of a draft drawn by Steele, Miller & Company in the sum of 37,097.55 francs, which at the rate of exchange amounted to $7,120.45, to which draft was attached a paper purporting to be a bill of lading for 100 bales of cotton, and your orator annexes hereto as Exhibit "A" a statement showing the date of such
5 draft, the name of the drawee, viz., Comptoir d'Escompte de Mulhouse, the time when the draft was payable, the marks of the cotton and the number of the bales thereof for which paper purporting to be a bill of lading were attached to such draft, and the amount of such draft in francs, in which form of currency the draft was drawn, and your orator now avers as a matter of fact that the paper attached to the said draft was not a bill of lading for which any cotton had been received or shipped by the carriers which it was purported had issued such bill of lading as recited therein, and such paper purporting to be the bill of lading was therefore wholly spurious and of no force and effect as representing the cotton called for by them. The draft aforesaid, and appearing in the said Exhibit "A" attached hereto, was accepted and paid for by or for Comptoir d'Escompte de Mulhouse for the purpose of obtaining and thus buying the bill of lading thereto attached, and the cotton called for by such lading, and by such acceptance and payment, your orator is advised and charges that Comptoir d'Escompte de Mulhouse became and was a creditor of said Steele, Miller & Company in the sum of money hereinbefore stated.

Sixth. Your orator avers that the firm of Scheuch & Company, herein made a defendant, was at the time of the transaction herein recited, a commercial firm engaged in buying and selling cotton in Havre, France; that the said firm would and did purchase from Steele, Miller & Company certain cotton, and, in accordance with the customs of the trade, did open banker's credit against which Steele, Miller & Company would draw its draft to which was attached the bill of
6 lading, presumably bearing the marks of the cotton shipped, and to which was further attached what is known in the trade as "all necessary documents"; that in the transaction herein complained of, the cotton referred to in the bill of lading and in the draft hereinbefore described was sold to Scheuch & Company, draft to be made upon Comptoir d'Escompte de Mulhouse, papers attached to said draft to the order of Steele, Miller & Company, notify Scheuch & Company.

Your orator further avers that for a long time previous to the 1st day of April, 1910, and at all times since that date, Steele, Miller & Company were wholly insolvent; that they had issued and negotiated drafts with spurious bills of lading attached in the manner hereinabove described, which had been purchased and paid for by persons in various parts of the world in an amount of money approximating three million dollars ($3,000,000) or more.

Seventh. Your orator shows that on or about the 6th day of April, 1910, the said Steele, Miller & Company had in its possession or under its control at Holly Springs, Mississippi, 100 bales of cotton marked as follows:

R. B. T. R.

and that said cotton on or about said date was shipped by said Steele, Miller & Company to the City of New Orleans, waybills or bills of lading being issued in favor of J. D. Hardin & Company, of this city, and your orator annexes hereto as Exhibit "B" a statement showing the marks of said cotton, the number of bales of each mark, the date of delivery and issuance of the bill of lading or waybill by the carrier, and the
7 destination of said cotton. Your orator avers that the said cotton reached the City of New Oreans on or about the 15th day of April, 1910, and that thereupon the said cotton was claimed by J. D. Hardin or J. D. Hardin & Company, acting as agents of Steele, Miller & Company, and

said cotton was delivered to the Compagnie Generale Transatlantique through its agent, the Texas Transport & Terminal Company, and port bills of lading issued therefor, which said bills of lading were returned by the said Hardin to Steele, Miller & Company at Corinth, Mississippi, or delivered in person to a member of said firm or an agent of said firm. Your orator annexes hereto as Exhibit "C" a statement showing the date that said cotton was delivered to the Texas Transport & Terminal Company as agents of the Compagnie Generale Transatlantique, the number and date of the bill of lading, the marks and number of bales of each mark of the said cotton so delivered.

Eighth. Your orator avers that about April 15, 1910, as herein stated above, Comptoir d'Escompte de Mulhouse and Scheuch & Company, or both of them, were ordinary unsecured creditors of Steele, Miller & Company in the sum of $7,120.45, represented by the draft herein described and to which were attached the spurious and forged bill of lading; that on or about said date the said Steele, Miller & Company, being then insolvent, with intent to prefer said Comptoir d'Escompte de Mulhouse or Scheuch & Company, or both of them, over their other creditors, did deposit in the United States mail the said port bill of lading, the said bill of lading being addressed to Scheuch & Company, and the same having been indorsed by

8 Steele, Miller & Company, the object and purpose of forwarding said port bill of lading being to substitute the same for the forged and worthless bill or bills of lading attached to the drafts held by the said Comptoir d'Escompte de Mulhouse or Scheuch & Company, or both of them, and that said port bill of lading in due course was received by Scheuch & Company and delivered to Comptoir d'Escompte de Mulhouse, and your orator is advised that Comptoir d'Escompte de Mulhouse thereupon surrendered its spurious and forged bill of lading to Scheuch & Company, who is now holding them, or by arrangement between said Scheuch & Company and the said Comptoir d'Escompte de Mulhouse, said spurious bill of lading is being held by the said Comptoir d'Escompte de Mulhouse for account of said parties. Your orator avers that the transmission of said port bill of lading to be substituted for the said fraudulent bill of lading was done with the intent to prefer the said Comptoir d'Escomtpe de

Mulhouse, and that when the said bill of lading was mailed to the said Scheuch & Company for delivery to Comptoir d'Escompte de Mulhouse, and was received by the said Scheuch & Company and delivered to Comptoir d'Escompte de Mulhouse, the said Scheuch & Company and the said Comptoir d'Escompte de Mulhouse, in accepting the said bills of lading and permitting the substitution of said valid and port or custody of lading for the worthless bill of lading then held, knew or should have known and had reasonable cause to believe that a preference was thereby given and intended, and knew or should have known that Steele, Miller & Company was at said time insolvent and that the effect of the mailing, the receipt and acceptance and substitution of said bill of lading was to

9 enable the said Scheuch & Company or the said Comptoir d'Escompte de Mulhouse to obtain payment of its said draft, and your orator now charges that the effect of the act hereinabove described, if maintained and permitted by this Honorable Court, will be to enable the said Comptoir d'Escompte de Mulhouse or Scheuch & Company, or both of them, to obtain a greater per cent of their said debt than any other creditor of said bankrupt, and that such acts should be set aside. Your orator charges that the acts hereinabove complained of were performed within four months prior to the filing of the petition of involuntary bankruptcy herein, and your orator is advised that the act or acts complained of are voidable at his election, and he does now elect to avoid the same and files this his bill to avoid said transfer.

Your orator avers that at the time of the institution of the proceedings in bankruptcy and for a year previous to that time the said firm of Steele, Miller & Company and the individual members of said firm were insolvent within the meaning and intent of the bankrupt laws of the United States, and that said Steele, Miller & Company and the individual members of said firm are so insolvent and that they have not surrendered assets of sufficient value to pay the creditors of said estate and that the amount surrendered by said bankrupts, including any amount that might be recovered by litigation, and the estates of the individual members when added to the firm assets, will not be sufficient to discharge the debts and obligations of said Steele, Miller & Company, but will only pay a small proportion of said obligations.

10 Ninth. Your orator avers that, at the time of the filing of the petition in involuntary bankruptcy herein referred to, 2,494 bales of said cotton were about to be shipped on the steamship "Texas" to Havre, France, and that the said 2,494 bales of cotton were actually loaded upon the said steamship; that 500 bales of said cotton were in the custody of the New Orleans Terminal Company at Port Chalmette; that, to-wit, on the 7th day of May, 1910, your orator as receiver in bankruptcy of said estate filed his petition for injunction against the removal of said cotton in the United States District Court for the Eastern District of Louisiana, and thereupon the Honorable District Court granted a restraining order, and subsequently on the 9th day of May, 1910, said Court issued an injunction pendente lite, enjoining, restraining and prohibiting the master, owner and agent of the steamship "Texas" from removing from the jurisdiction of this Court the cotton referred to in said proceedings, and on the 31st day of May, 1910, issued its injunction against the New Orleans Terminal Company to the same effect, all of which will appear more fully by the record of said proceedings entitled J. A. E. Pyle, Receiver, vs. Philip Landgren, master S. S. Texas, et al., No. 14,219 of the docket of the United States District Court for the Eastern District of Louisiana, which said record is made part hereof as though fully and at length set forth herein. Your orator avers that upon the issuance of said injunction, the Texas Transport & Terminal Company, the agent of the Compagnie Generale Transatlantique, the owner of said steamship "Texas," acting by and with the consent of the master and owner of said

11 vessel, caused the cotton, the removal of which had been enjoined, to be discharged from said ship and stored in the Kentucky Press in this city, to remain there until the further orders of said Court, all in accordance with the decree rendered in the above numbered and entitled cause, and your orator avers that the said cotton is now in the said Kentucky Press awaiting the determination of this suit. Your orator avers that the cotton hereinabove described was and is part of and included in the cotton in the custody of the Texas Transport & Terminal Company, agent of the Compagnie Generale Transatlantique, owner of the steamship "Texas" and now stored in the Kentucky Press, awaiting the determination of this suit. Your orator attaches hereto a list as

Exhibit "D," a table showing the marks of the cotton, the removal of which was enjoined in said proceedings.

Tenth. Your orator further avers that the Texas Transport & Terminal Company W. H. Hendren, its agent, and the Compagnie Generale Transatlantique decline to deliver said cotton or any part thereof to complainant or to any other person until it has been adjudged who is the owner of this cotton and to whom the possession thereof should be delivered by it.

Eleventh. Your orator avers that, although the Texas Transport & Terminal Company holds itself out as the duly accredited agent of the Compagnie Generale Transatlantique and does and performs acts for and in behalf of said Compagnie Generale Transatlantique, your orator is informed that said Compagnie Generale Transatlantique has never
12 designated the said Texas Transport & Terminal Company as its agent for the service of process in this State as required by the laws of this State, and that process should issue herein against the said Compagnie Generale Transatlantique through John T. Michel, Secretary of State of the State of Louisiana in accordance with the laws of Louisiana upon the subject-matter.

Twelfth. Your orator further shows that the said Scheuch & Company and the individual members of said firm, and the Comptoir d'Escompte de Mulhouse are not residents of the Eastern District of Louisiana, but are aliens. That neither said Scheuch & Company nor the individual members of said firm nor the Comptoir d'Escompte de Mulhouse or any of its agents or officers are at present within the Eastern District of Louisiana or in the United States, and neither the said Scheuch & Company nor the individual members of said firm, nor the Comptoir d'Escompte de Mulhouse are represented by anyone authorized to accept or receive service of process and that service by publication in the manner and form provided in such cases is necessary in the premises.

Thirteenth. Your orator submits himself to the jurisdiction of this Court, and offers to do equity, and to perform

such terms and conditions as may be imposed by the Court upon the granting of the relief hereinafter prayed for.

The premises considered, your orator prays that this Court will take jurisdiction of this his bill; that the Compagnie General Transatlantique and the Texas Transport & Terminal Company be made parties respondent hereto, and that by appropriate process and orders they be severally required to answer this bill, but not under oath, answer under oath, being hereby expressly waived; that this Court's writ of subpoena issue to the said Compagnie General Transatlantique and the Texas Transport & Terminal Company, commanding them to answer this bill according to the rule of this Court, but not under oath, answer under oath being hereby expressly waived; that service upon the Compagnie Generale Transatlantique be made upon John T. Michel, Secretary of State of the State of Louisiana, at Baton Rouge, Louisiana; that by appropriate orders and process Scheuch & Company and Comptoir d'Escompte de Mulhouse be required to appear in this cause and plead or demur to and answer this bill, but not under oath, answer under oath being expressly waived; that pending the final hearing of this bill said Compagnie Generale Transatantique, the Texas Transport & Terminal Company, and W. H. Hendren, agent, their officers and employees, be enjoined and restrained from removing or disposing of said 100 bales of cotton; that upon the final hearing of this bill this Court will set aside the transfer of the said 100 bales of cotton by the said bankrupt to the said Comptoir d'Escompte de Mulhouse or Scheuch & Company, or both of them, and hold the same void and of no effect and decree; that the title to the said cotton and the right of possession thereof is in your orator and will permit your orator to take possession of said cotton and administer the same, or the proceeds thereof, for the benefit of the creditors in bankruptcy of Steele, Miller & Company in said bankruptcy proceedings in which said estate is being
13 administered in the United States District Court for the Northern District of Missisippi and in the ancillary proceedings in the United States District Court for the Eastern District of Louisiana.

And if your orator is mistaken in the relief prayed for,

then he prays for such other, further and general relief as in equity and good conscience he may be entitled to.

(Signed) W. A. PERCY,
J. A. LAMB,
SAUNDERS, DUFOUR & DUFOUR,
Solicitors.

15 State of Louisiana,
Parish of Orleans,
City of New Orleans.

William C. Dufour, being duly sworn, deposes and says: That he is a member of the firm of Saunders, Dufour & Dufour, attorneys at law in the City of New Orleans; that he is one of the attorneys for J. A. E. Pyle, trustee; that the said J. A. E. Pyle, trustee, is a resident of the State of Mississippi, and is not now in the State of Louisiana, and is not otherwise represented; and that the allegations contained in the foregoing petition are true and correct to the best of his knowledge and belief, so help him God.

(Signed) WM. C. DUFOUR.

Sworn to and subscribed before me this 12th day of August, 1910.

[Seal] (Signed) JOHN JANVIER,
Notary Public.

16 EXHIBIT "A."

Statement Comptoir d'Escompte de Mulhouse, Havre, France. Date, 1/30/1910; draft, 2143; mark R. B. T. R.; No. bales, 100; amount, 37,097.55; pretended origin of shipment, Columbus, Miss. Which, at 5.21, amounts to $7,120.45.

17 EXHIBIT "B."

Statement of Cotton Shipped by Steele, Miller & Co., to J. D. Hardin, Jr., & Co., of New Orleans, on Local B/L to New Orleans, La., and Delivered by Said J. D. Hardin, Jr., & Co., to Str. Texas:

Date, 4/6/1910; R. R., M. & O. & N. O. & N. E.; marks, R. B. T. R.; Holly Springs, Miss.

18 EXHIBIT "C."

Statement of Cotton Shipped by Steele, Miller & Co., S/o to J. D. Hardin, Jr., & Co., and Delivered to the Texas Transport & Terminal Company, Agent for the Str. Texas, by the Said J. D. Hardin, Jr., & Co.:

Date, April 25, 1910. Custody. B/L. Str. Texas. Marks, R. B. T. R.

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19 United States District Court, Eastern District of Louisiana.

J. A. E. Pyle, Trustee,
vs. No. 14,241.
Texas Transport & Terminal Company, et als.

Considering the allegations of this bill and the allegations in support thereof;

It is now ordered, That this bill be filed and process issue as prayed for.

It appearing to the Court that there is danger of irreparable injury to complainant unless the acts sought to be enjoined herein are restrained until the hearing of a motion for injunction in this case, it is ordered:

1. That the defendants, the Texas Transport & Terminal Company and the Compagnie Generale Transatlantique, and each of them, and the individual members thereof, and each of their servants, agents and employees, be and they are hereby restrained and enjoined until the further order of the Court herein from removing from the jurisdiction of this Court the 100 bales of cotton described in the bill filed in this cause, leave being given to the said Texas Transport & Terminal Company and the Compagnie Generale Transatlantique, or any other party in interest, to apply after five days notice to complainant's counsel for permission to bond said cotton.

2. That the defendants, Texas Transport & Terminal Company and Compagnie Generale Transatlantique, and each of them, show cause before this Court in the United States court

room at the City of New Orleans, at eleven o'clock a. m., on the first Monday in November, to-wit, Monday, the seventh day of November, 1910, why an injunction pendente lite as prayed for in the said bill, should not be issued.

3. That this restraining order shall be in force and effect from the date hereof until the hearing of complainant's motion for an interlocutory injunction herein, provided that complainant furnish bond within ten days from the date of this order in the sum of $100.00, payable to the defendant with surety approved by the Clerk of this Court and conditioned substantially as hereinafter mentioned. The condition of said bond shall be substantially as follows:

Whereas, a restraining order has been made in the above numbered and entitled cause by the terms of which the defendants and each of them, and each of their agents and employees are restrained until an application for an interlocutory injunction herein is determined from doing or causing to be done certain acts;

Now, therefore, if the above mentioned J. A. E. Pyle, receiver, shall pay or cause to be paid all damages caused by the issuance of said restraining order, and the costs of this cause in connection therewith in the event that said restraining order is dissolved or vacated as having been wrongfully issued, or because the said acts are improperly restrained, then this bond to be void, otherwise to remain in full force and effect.

It further appearing to the Court that said defendants, Scheuch & Company and Fred Scheuch and Albert Schilling, the individual members of said firm, and Comptoir d'Escompte de Mulhouse, are not inhabitants of the Eastern District of Louisiana, upon whom service or process can be made;

It is ordered that the said defendants, Scheuch & Company and Fred Scheuch and Albert Schilling, individual members of said firm, and Comptoir d'Escompte de Mulhouse shall appear, plead, answer or demur by the first Monday of November, 1910; that a copy of this order be served upon said defendants where ever found, and if such personal service is not practicable, that said defendants be notified of this order so directing them to appear, plead, answer or demur by the first Monday of November, 1910, by publication thereof in a

daily newspaper in the City of New Orleans, Louisiana, not less than once a week for six consecutive weeks.

21 (Signed) RUFUS E. FOSTER, Judge.
August 16th, 1910.

Notation as to the Publication of a Certified Copy of the Foregoing Order.

Published in the
New Orleans Item on
Monday, Septr. 12th, and on
Monday, Septr. 17th; and on
Monday, Septr. 26th; and on
Monday, Octr. 3rd; and on
Monday, Octr. 10th; and on
Monday, Octr. 17th, 1910.

(Signed) F. H. MORTIMER, Clerk.
Per GEO. W. ROBERTSON,
Deputy Clerk.

22 MARSHAL'S RETURNS ON ORDER ON BILL OF COMPLAINT.

14,241.

Filed August 30, 1910.

Received by U. S. Marshal, New Orleans, La., Aug. 18/10. And on Aug. 25/10, I served the original writ of which this writ is a certified copy on the Texas Transport and Terminal Co., by handing the same to W. Hendren, local manager, in person in their office in New Orleans, La.

(Signed) VICTOR LOISEL,
U. S. Marshal.

(Signed) By B. F. QUEEN, Dy.

Received by U. S. Marshal, New Orleans, La., Oct. 18/10. And on the 26th day of same month I served copy hereof

on E. J. McGivney, Asst. Sect'y of State of La., by handing same to him in person in Baton Rouge, La.

(Signed) VICTOR LOISEL,
U. S. Marshal.

(Signed) By T. I. GALBRITH, Dy.

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23 SUBPOENA IN CHANCERY.

Issued August 18th, 1910.

United States of America.

The President of the United States,

To the Marshal of the Eastern District of Louisiana—Greeting:

You are hereby commanded to summon the Compagnie Generale Transatlantique, through John T. Michel, Secretary of State of the State of Louisiana, at Baton Rouge, Louisiana, to appear before a District Court of the United States of America, to be holden at the City of New Orleans, Louisiana, on the first Monday of November, 1910, then and there to answer a bill in chancery filed against it and others, wherein J. A. E. Pyle, Trustee in Bankruptcy of Steele, Miller & Company, is complainant, and said the Compagnie Generale Transatlantique; Texas Transport & Terminal Company; F. Scheuch & Company and Comptoir D'Escompte de Mulhouse are defendants.

Herein fail not, and have you then and there this writ, with your indorsement thereon, how you executed the same.

Witness, the Honorable Rufus E. Foster, Judge of the District Court of the United States, at New Orleans, La., this 18th day of August, in the year of our Lord one thousand nine hundred and ten, and 135th year of American independence.

[Seal] (Signed) FRANK H. MORTIMER,
Clerk.

The defendant is hereby notified that it is required to enter its appearance in the Cerk's Office of the United States Dis-

trict Court on or before the first Monday of November, 1910, otherwise the bill may be taken pro confesso.

(Signed) FRANK H. MORTIMER, Clerk.

Clerk's Office:

A true copy.

[Seal] (Signed) FRANK H. MORTIMER, Clerk.

24 [Indorsed on back:] No. 14241. United States District Court, Eastern District of Louisiana, New Orleans Division. J. A. E. Pyle, Trustee, vs. Texas Transport & Terminal Company, et als. Subpoena in Chancery. Marshal's Return.

MARSHAL'S RETURN ON SUBPOENA IN CHANCERY.

Filed August 30th, 1910.

Received by U. S. Marshal, New Orleans, La.

Aug. 18/10, and on the 26th day of the same month and year I served the original of which this writ is a certified copy on John T. Michel, Secretary of the State of Louisiana, by handing the same to the Asst. Secretary of the State of Louisiana, Eugene J. McGivney, in person, in the City of Baton Rouge, Louisiana. VICTOR LOISEL, U. S. Marshal.

(Signed) By T. I. GALBRETH, Deputy U. S. Marshal.

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25 SUBPOENA IN CHANCERY.

Issued August 18th, 1910.

United States of America.
The President of the United States,

To the Marshal of the Eastern District of Louisiana—Greeting:

You are hereby commanded to summon the Texas Transport & Terminal Company to appear before a District Court of the

United States of America, to be holden at the City of New Orleans, Louisiana, on the first Monday of November, 1910, then and there to answer a bill in chancery filed against it and others, wherein J. A. E. Pyle, Trustee in Bankruptcy of Steele, Miller & Company is complainant and said the Compagnie Generale Transatlantique; Texas Transport & Terminal Company; F. Scheuch & Company and Comptoir D'Escompte De Mulhouse are defendants.

Herein fail not, and have you then and there this writ, with your indorsement thereon, how you have executed the same.

Witness, the Honorable Rufus E. Foster, Judge of the District Court of the United States, at New Orleans, La., this 18th day of August, in the year of our Lord one thousand nine hundred and ten and 135th year of American independence.

[Seal] (Signed) FRANK H. MORTIMER,
Clerk.

The defendant is hereby notified that it is required to enter its appearance in the Clerk's Office of the United States District Court on or before the first Monday of November, 1910, otherwise the bill may be taken pro confesso.

(Signed) FRANK H. MORTIMER, Clerk.

Clerk's Office:
A true copy.
[Seal] (Signed) FRANK H. MORTIMER,
Clerk.

26 [Indorsed on back:] No. 14241. United States District Court, Eastern District of Louisiana, New Orleans Division. J. A. E. Pyle, Trustee, vs. Texas Transport & Terminal Company, et als. Subpoena in Chancery. Marshal's Return.

MARSHAL'S RETURN ON SUBPOENA IN CHANCERY.

Filed August 30th, 1910.

Received by U. S. Marshal, New Orleans, La.
Aug. 18/10, and on Aug. 25/10, I served the original writ

of which this writ is a certified copy on the Texas Transport and Terminal Company by handing the same to W. H. Hendren, local manager, in person in their office in New Orleans, La.

VICTOR LOISEL,
U. S. Marshal.

(Signed) By B. F. QUEEN, Dy.

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27 BOND OF J. A. E. PYLE, TRUSTEE.

Filed August 25th, 1910.

United States District Court, Eastern District of Louisiana.

J. A. E. Pyle, Trustee,
vs. No. 14241
Texas Transport and Terminal Company, et als.

Know All Men By These Presents: That we, J. A. E. Pyle, trustee of Steele, Miller & Company, bankrupt, appointed by and acting under authority of the District Court of the United States for the Northern District of Mississippi, as principal, and William C. Dufour, as surety, are held and firmly bound unto the Compagnie Generale Transatlantique, the Texas Transport & Terminal Company, F. Scheuch & Company, and Comptoir D'Escompte de Mulhouse, defendants herein for the use and benefits of defendants in the below mentioned suit, in the full and true sum of one hundred dollars ($100.00) lawful money of the United States of America, for the payment whereof we bind ourselves, our heirs, executors, successors, and assigns firmly by these presents.

Thus done and signed in the City of New Orleans, State of Louisiana, on this 24th day of August, A. D. 1910.

Now, therefore, the condition of the above obligation is such that

Whereas, the said J. A. E. Pyle, trustee in bankruptcy of Steele, Miller & Company, did, in the proceedings No. 14241 of the docket of the United States District Court for the Eastern District of Louisiana, entitled "A. E. Pyle, Trustee, versus Texas Transport & Terminal Co., et als.," apply for

and obtain a restraining order against the Compagnie Generale Transatlantique and the Texas Transport & Terminal Company restraining and enjoining them, and each of them, and the individual members thereof, and each of their servants, agents, and employees, until the further order of the Court herein, from removing from the jurisdiction of the Court the 100 bales of cotton described in the pleadings filed in this cause upon condition that said trustee, J. A. E. Pyle, should furnish bond.

Now, therefore, if the above mentioned J. A. E.
28 Pyle, Trustee, shall pay or cause to be paid all damages caused by the issuance of said restraining order, and the costs of this cause in connection therewith in the event that said restraining order is dissolved or vacated as having been wrongfuly issued, or because the said acts are improperly restrained, then this bond to be void, otherwise to remain in full force and effect.

(Signed) J. A. E. PYLE, Trustee.

(Signed) By SAUNDERS, DUFOUR & DUFOUR,
Attys.

WM. C. DUFOUR.

William C. Dufour, surety on the within bond, being duly sworn, says that he resides in the City of New Orleans, Louisiana, and is worth the sum of one hundred dollars ($100.00) over and above all his just debts and liabilities.

(Signed) WM. C. DUFOUR.

Sworn to and subscribed before me this 24th day of August, 1910.

(Signed) ROSS E. BREAZEALE. [Seal]

This bond is approved for the sum of one hundred dollars.

(Signed) GEO. W. ROBERTSON,
Deputy Clerk.

29 RESTRAINING ORDER.

Issued August 25th, 1910.

United States of America,

District Court of the United States, Eastern District of Louisiana, New Orleans, Division.

J. A. E. Pyle, Trustee,
vs. No. 14241
Texas Transport & Terminal Company et als.

The President of the United States,

To the Texas Transport & Terminal Company and the Compagnie Generale Transatlantique—Greeting:

Whereas, it has been represented unto us in our said District Court on the part of J. A. E. Pyle, trustee in bankruptcy of Steele, Miller & Company, in a bill of equity lately exhibited against you and each of you touching certain matters and things therein set forth; and, whereas, the Honorable Rufus E. Foster, the Judge of our said Court, upon due consideration thereof, has made and allowed an order in said cause, whereby you and each of you are required to show cause on the seventh day of November, 1910, at 11 a. m., why an injunction should not issue as prayed for in said bill of complaint; and, whereas, the said Judge has granted and allowed an order restraining you and each of you immediately and forthwith and during pendency of said motion for an injunction to the full extent and effect as prayed for in said bill of complaint.

Now, therefore, in consideration of the premises and of the allegations in said bill of complaint contained, you, the said Texas Transport & Terminal Company and the said Compagnie General Transatlantique, your agents, attorneys and servants and each of you are hereby commanded and strictly enjoined under the penalty of the law, that you and each of you absolutely refrain and desist from removing from the jurisdiction of this Court the 100 bales of cotton described in the bill filed in this cause. And that you the said Texas Transport & Terminal Company and the said Compagnie Generale Transatlantique,

your agents, attorneys and servants and each of you remain so inhibited and restrained until the further order of our said Court in the premises.

Witness, the Honorable Rufus E. Foster, Judge of said Court, at the City of New Orleans, La., this 25th day of August, in the year of our Lord 1910.

(Signed) FRANK H. MORTIMER, Clerk.
By GEO. W. ROBERTSON,
Deputy Clerk.

A true copy.

(Signed) GEO. W. ROBERTSON,
Deputy Clerk.

30 [Indorsed on back:] No. 14241. U. S. District Court, Eastern District of Louisiana, New Orleans Division. J. A. E. Pyle, Trustee, vs. Texas Transport & Terminal Company, et als. Restraining Order.

MARSHAL'S RETURN ON RESTRAINING ORDER.

Filed September 12th, 1910.

Received by U. S. Marshal, New Orleans, La.

Aug. 25/10, and on same day, I served the original writ of which this a certified copy on the Texas, Transport and Terminal Co., et als., by handing the same to W. H. Hendren, local manager, in person in their office in New Orleans, La.

VICTOR LOISEL,
U. S. Marshal.

(Signed) By B. F. QUEEN, Dy.

Received by U. S. Marshal, New Orleans, La.,

Aug. 25/10, and on Sept. 10/10, I served the original writ of which this is a certified copy on the Compagnie Generale Transatlantique by handing the same to Eugene McGivney, Ass't Sec. of State in Baton Rouge, La.

VICTOR LOISEL,
U. S. Marshal.

(Signed) By T. F. LAICHE, Dy.

31 APPEARANCE OF GEORGE H. TERRIBERRY AS SOLICITOR FOR TEXAS TRANSPORT & TERMINAL COMPANY AND COMPAGNIE GENERALE TRANSATLANTIQUE.

Filed September 6, 1910.

District Court of the United States Eastern District of Louisiana, New Orleans Division.

J. A. E. Pyle, Trustee,
vs. No. 14,241
Texas Transport & Terminal Company et als.

To the Clerk of said Court:

Please enter my appearance as Solicitor for the Texas Transport & Terminal Company and Compagnie General Transatlantique, defendants in the above styled and numbered cause.

(Signed) GEO. H. TERRIBERRY.

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32 SPECIAL APPEARANCE OF COMPTOIR D'ESCOMPTE DE MULHOUSE.

Filed October 7, 1910.

United States District Court, Eastern District of Louisiana.

J. A. E. Pyle, Trustee,
vs. No. 14,241
Texas Transport and Terminal Company et als.

Special and Qualified Appearance of Comptoir d'Escompte de Mulhouse.

The Comptoir d'Escompte de Mulhouse, made one of the defendants herein, now, through its undersigned solicitors, filed this its special appearance herein, reserving the right to object to the jurisdiction of this Court to grant the relief herein sought by complainant, and appearing under protest specially and solely for said purpose and for the protection

of its rights to and in respect to the cotton mentioned in said complaint. (Signed) DENEGRE & BLAIR,
Solicitors.

October 7th, 1910.

To the Clerk of the said Court:
Please enter the above special and qualified appearance of the Comptoir d'Escompte de Mulhouse.
(Signed) DENEGRE & BLAIR,
Solicitors for the above named Defendant.

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33 HEARING ON APPLICATION FOR INJUNCTION PENDENTE LITE, AND CONTINUANCE.

Extracts From the Minutes.

May Term, 1910.

New Orleans, Monday, November 7th, 1910.
Court met pursuant to adjournment.
Present: Hon. Rufus E. Foster, Judge.

J. A. E. Pyle, Trustee,
vs. No. 14,241
Texas Transport and Terminal Company et als.

The application for an injunction pendente lite, herein fixed for hearing this day, was called:
Present: Messrs. Saunders, Dufour & Dufour, Solicitors for Complainant.
Present: George H. Terriberry, Solicitor for Texas Transport & Terminal Co., et als., defendants.
Present: Messrs. Denegre & Blair, Solicitors for Comptoir d'Escompte de Mulhouse, defendants.
Whereupon, on motion of solicitors for complainant,
It is ordered that the application for an injunction pendente lite be continued until Monday, November 21st, 1910, at 11 a. m., and that the restraining order heretofore issued herein remain in force until the further order of the Court.

34 HEARING ON APPLICATION FOR INJUNCTION PENDENTE LITE, AND CONTINUANCE.

Extract From the Minutes.

November Term, 1910.

New Orleans, Monday, November 21st, 1910.

Court met.

Present: Hon. Rufus E. Foster, Judge.

J. A. E. Pyle, Trustee,

vs. No. 14,241

Texas Transport and Terminal Company et als.

The application for an injunction pendente lite herein, set for hearing this day, was called.

Present: Messrs. Saunders, Dufour & Dufour, Solicitors for Complainant.

Present: George H. Terriberry, Esq., Solicitor for Texas Transport & Terminal Co., et als., Defendants.

Present: Messrs. Denegre & Blair, for Comptoir d'Escompte de Mulhouse, Defendant.

Whereupon, on motion of the solicitors for the parties in interest,

It is ordered that the hearing of said application be continued until Friday, December 2nd, 1910, at eleven o'clock A. M.;

It is further ordered, on motion of solicitors for complainant, that the restraining order heretofore issued herein remain in force until the further order of the Court.

35 HEARING ON APPLICATION FOR INJUNCTION PENDENTE LITE, IN PART AND CONTINUANCE.

Extract From the Minutes.

November Term, 1910.

New Orleans, Friday, December 2nd, 1910.

Court met pursuant to adjournment.

Present: Hon. Rufus E. Foster, Judge.

J. A. E. Pyle, Trustee,

vs. No. 14,241

Texas Transport and Terminal Company et als.

The application for an injunction pendente lite herein, set for hearing this day, was called:

Present: Messrs. Saunders, Dufour & Dufour, Solicitors for Complainant.

Present: George H. Terriberry, Esq., Solicitor for Texas Transport & Terminal Co., et als., Defendants.

Present: Messrs. Denegre & Blair, for Comptoir d'Escompte de Mulhouse, Defendant.

Whereupon the solicitors for the respective parties filed notes of evidence in their behalf.

After hearing argument in part, it was ordered by the Court that the cause be continued until Saturday, December 3rd, 1910, at ten o'clock A. M., for further argument.

36 NOTE OF EVIDENCE ON BEHALF OF COMPLAINANT.

Filed December 2nd, 1910.

United States District Court, Eastern District of Louisiana.

J. A. E. Pyle, Trustee,
vs. No. 14,241
Texas Transport & Terminal Company, et als.

Note of Evidence on Behalf of Complainant.

Solicitors for complainant offer, produce and file in evidence:

(1) Affidavit of Elmer E. Clark, business manager of the New Orleans Item, a daily newspaper published in the City of New Orleans, which affidavit is sworn to before Ross E. Brezeale, notary public, on November 16, 1910, to which is attached copy of advertisement of order of Court.

(2) Affidavit of C. H. G. Linde, taken before John Janvier, notary public, on December 2nd, 1910, together with the exhibit attached thereto, said exhibit containing a memorandum of 2498 bales of cotton, together with their marks, etc.

(3) Affidavit of Edward S. Elliott, taken before John Janvier, notary public, on December 2nd, 1910, together with exhibit thereto attached and statement showing dealings of Steele, Miller & Company, with the Bank de Mulhouse, Comptoir Escompte de Mulhouse, Paul Chardin, and Societe Generale.

(4) Affidavit of William C. Dufour, taken before John Janvier, notary public, of date November 28th, 1910, together with exhibits thereto, said exhibits being two copies of the Havre Bulletin of date April 27th and April 28th, inclusive.

(5) Affidavit of William C. Dufour before John Janvier, notary public, on November 25th, together with exhibit at-

tached thereto, said exhibit being a copy of the Liverpool Daily Post of date November 27th, 1910.

37 (6) Affidavit of Andre Lafargue, taken before John Janvier, notary public, on November 25, 1910, together with exhibit attached thereto, said exhibit being testimony of W. H. Hendren, taken before the Hon. William A. Bell, referee in bankruptcy.

(7) Affidavit of Andra Lafargue, taken before John Janvier, notary public, on November 25, 1910, together with exhibit thereto, said exhibit being the testimony of J. D. Hardin taken before the Hon. William A. Bell, referee in bankruptcy.

(8) Affidavit of William C. Dufour, taken before John Janvier, notary public, on December 2, 1910, together with an exhibit thereto attached, said exhibit being a certified copy of the petition filed in the matter of Cohn & Company vs. Steele, Miller & Company in the United States Circuit Court for the State of Mississippi, together with a certified copy of the judgment appointing the receiver for the firm of Steele, Miller & Company.

The entire proceeding, including petition for adjudication in involuntary bankruptcy, order appointing J. A. E. Pyle temporary receiver, and judgment adjudicating Steele, Miller & Company and the individual members thereof involuntary bankrupts, together with the order appointing J. A. E. Pyle trustee of Steele, Miller & Company, and the individual members thereof, and a certified copy of the bond of said J. A. E. Pyle, same being embraced in the matter entitled Knoop Fabarius & Company, et als., vs. Steele, Miller & Company, No. 123 of the docket of the United States District Court for the Northern District of Mississippi, same being embraced in the ancillary proceedings No. 1430 of the docket of this Court entitled Knoop Fabarius, et al., vs. Steele, Miller & Company.

38 United States District Court, Eastern District of Louisiana, New Orleans Division.

J. A. E. Pyle, Trustee,
versus No. 14,241
Texas Transport & Terminal Company, et als.

Note:—
Evidence offered and filed on behalf of the complainant and referred to in his Note of Evidence, copied into the Transcript of Appeal in the case of J. A. E. Pyle, Trustee, vs. Texas Transport & Terminal Company, et als., No. 14,240, of the Docket of the United States District Court, Eastern District of Louisiana, New Orleans Division, in accordance with the Praecipe for Transcripts of Appeal.

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39 NOTE OF EVIDENCE OF TEXAS TRANSPORT & TERMINAL COMPANY AND COMPAGNIE GENERALE TRANSATLANTIQUE.

Filed December 2nd, 1910.

In the District Court of the United States for the Eastern District of Louisiana.

J. A. E. Pyle, Trustee,
vs. No. 14,241
Texas Transport & Terminal Company, et als., Including Comptoir d'Escompte de Mulhouse.

Note of evidence on behalf of Texas Transport & Terminal Company and Compagnie Generale Transatlantique, defendants herein, on the trial of the rule to show cause why an injunction pendente lite should not be issued.

Counsel for the above named defendants offers, reads and files in evidence the following affidavits and exhibits:

1. The affidavit of William H. Hendren, local manager of Texas Transport & Terminal Company, agent for Compagnie

Generale Transatlantique, sworn to before Charles F. Fletchinger, notary public, Parish of Orleans, State of Louisiana, November 7, 1910.

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40 United States District Court, Eastern District of Louisiana, New Orleans Division.

J. A. E. Pyle, Trustee,
versus No. 14,241
Texas Transport & Terminal Company, et als.

Note:—
Evidence offered and filed on behalf of the Texas Transport & Terminal Company and Compagnie Generale Transatlantique, and referred to in their Note of Evidence, copied into the Transcript of Appeal in the case of J. A. E. Pyle, Trustee, vs. Texas Transport & Terminal Company, et als., No. 14,240 of the Docket of the United States District Court, Eastern District of Louisiana, New Orleans Division, in accordance with the Praecipe for Transcripts of Appeal.

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41 NOTE OF EVIDENCE ON BEHALF OF COMPTOIR D'ESCOMPTE DE MULHOUSE ON RULE FOR INJUNCTION PENDENTE LITE.

Filed December 2, 1910.

United States District Court, Eastern District of Louisiana.

J. A. E. Pyle, Trustee,
vs. No. 14,241
Texas Transport and Terminal Company et als.

Note of Evidence on Behalf of Comptoir d'Escompte de Mulhouse, Defendant Herein, on the Trial of the Rule to Show Cause Why an Injunction Pendente Lite Should Not Be Issued.

Counsel for the above-named defendant offers, reads and files in evidence the following affidavits and exhibits:

1. The affidavits of Frans Lyzell, director of the Bank of Mulhouse; of Elisee Paul Dubois, managing director of the Societe Generale; of Emile Level, managing directors of the Comptoir d'Escompte de Mulhouse, and of Alphonse Riss, manager of the firm of Paul Chardin in Havre, all sworn to before John Preston Beecher, Vice Consul of the United States at Havre, France, on October 24, 1910.

2. Affidavit of J. P. Blair before Henry H. Chaffe, notary public, November 9, 1910, and copies of the one draft annexed to said affidavit purporting to be the drafts referred to in the affidavit of said—

3. Affidavit of J. P. Blair before Henry H. Chaffe, notary public, November 9, 1910, and the exhibits annexed thereto, namely, duplicate copies of the one through bill of lading and the one custody bills of lading referred to in the affidavit of Emile Level.

4. Affidavit of J. P. Blair, sworn to before Henry H. Chaffe, notary public, November 9, 1910, and the exhibits annexed thereto, namely, one note from Scheuch and Company dated May 7th, 1910, purporting to transmit
42 to the Comptoir d'Escompte de Mulhouse, one certain custody bill of lading therein mentioned and purporting to be the notes referred to in the said affidavit of Emile Level.

5. Affidavit of Albert Schilling of November 18, 1910, with letters of December 8th and 23rd, 1909, embodied therein.

6. Affidavits of Franz Lyzell, Elisee Paul Dubois and Emile Level before John Preston Beecher, U. S. Vice-Consul, November 18, 1910.

7. Affidavits of Albert Schilling and of Ferd. Scheuch, entitled and numbered in this cause before the said John Preston Beecher, U. S. Vice-Consul, November 18, 1910.

43 United States District Court, Eastern District of Louisiana, New Orleans Division.

J. A. E. Pyle, Trustee,
versus No. 14,241
Texas Transport & Terminal Company, et als.

Note:—
Evidence offered and filed on behalf of the Comptoir d'Escompte de Mulhouse, and referred to in its Note of Evidence, copied into the Transcript of Appeal in the case of J. A. E. Pyle, Trustee, vs. Texas Transport & Terminal Company, et als., No. 14,240 of the Docket of the United States District Court, Eastern District of Louisiana, New Orleans Division, in accordance with the Praecipe for Transcripts of Appeal.

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44 RESUMED HEARING ON APPLICATION FOR INJUNCTION PENDENTE LITE.

Extract From the Minutes.

November Term, 1910.

New Orleans, Saturday, December 3rd, 1910.
Court met pursuant to adjournment.
Present: Hon. Rufus E. Foster, Judge.

J. A. E. Pyle, Trustee,
vs. No. 14,241
Texas Transport and Terminal Company et als.

The hearing of this cause, as continued from Friday, December 2nd, was this day resumed.
Present: The solicitors for all parties in interest.
Whereupon, after hearing further argument, the cause was submitted, and taken under advisement.

45 DECREE ON APPLICATION FOR INJUNCTION.

Extract From the Minutes.

November Term, 1910.

New Orleans, Monday, January 2nd, 1911.

Court met pursuant to adjournment.

Present: Hon. Rufus E. Foster, Judge.

J. A. E. Pyle, Trustee,

vs. No. 14,241

Texas Transport and Terminal Company et al.

This cause came on to be heard at this term upon the application of complainant for an injunction pendente lite, and was argued by the solicitors for the respective parties, and submitted, when the Court took time to consider:

Upon due consideration whereof, and for the reasons assigned in writing, and on file in Cause No. 14,240 of the docket of this Court,

It is ordered that an injunction pendente lite issue herein as prayed for.

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46 INJUNCTION.

Issued January 2nd, 1911.

United States of America,

District Court of the United States, Eastern District of Louisiana.

J. A. E. Pyle, Trustee,

vs. No. 14241

Texas Transport & Terminal Company, et als.

The President of the United States of America,

To the Texas Transport & Terminal Company and the Compagnie Generale Transatlantique—Greeting:

Whereas, it has been represented unto us in our said Dis-

trict Court on the part of J. A. E. Pyle, trustee in bankruptcy of Steele, Miller & Company, in a bill of equity lately exhibited against you and each of you, touching certain matters and things therein set forth:

Now, therefore, in consideration of the premises and of the allegations in said bill in equity contained, you, the said Texas Transport & Terminal Company and the said Compagnie Generale Transatlantique, your attorneys and each of you, are hereby commanded and strictly enjoined, under the penalty of the law, that you absolutely refrain and desist from removing from the jurisdiction of this Court the 100 bales of cotton described in the bill filed in this cause, and that you remain so inhibited and enjoined until the further order of our said Court in the premises.

Witness, the Honorable Rufus E. Foster, Judge of said Court, at the City of New Orleans, this second day of January, in the year of our Lord, 1911.

[Seal] (Signed) FRANK H. MORTIMER,
Clerk.

Clerk's Office:
A true copy.
[Seal] (Signed) FRANK H. MORTIMER,
Clerk.

47 [Indorsed on back:] No. 14241. U. S. District Court, Eastern District of Louisiana, New Orleans Division. J. A. E. Pyle, Trustee, vs. Texas Transport & Terminal Company, et als. Injunction to Texas Transport & Terminal Co. and Compagnie Generale Transatlantique.

MARSHAL'S RETURN ON INJUNCTION.

Filed January 3rd, 1911.

Received by U. S. Marshal, New Orleans, La.,
Jan. 3/11, and on the same day, month and year I served the original of which this writ is a certified copy on the Texas Transport and Terminal Company by handing the same to the agent thereof, Mr. W. H. Hendren, in person, in the office of said company, in the City of New Orleans, Louisiana; and

on the Compagnie Generale Transatlantique by handing the same to the agent thereof, Mr. N. P. Pedrick, in person, in the City of New Orleans, La.

VICTOR LOISEL,
U. S. Marshal.

(Signed) By E. M. KINLER,
Deputy U. S. Marshal.

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48 MOTION FOR EXTENSION OF TIME AND ORDER.

Extract From the Minutes.

November Term, 1912.

New Orleans, Monday, January 2nd, 1911.

Court met pursuant to adjournment.

Present: Hon. Rufus E. Foster, Judge.

J. A. E. Pyle, Trustee,
vs. No. 14241
Texas Transport & Terminal Company et al.

Now through its solicitors, Denegre & Blair, comes Comptoir d'Escompte de Mulhouse, and still appearing specially and qualifiedly, under protest, and not waiving but reserving its right to object to the jurisdiction of this Court, asks the Court to grant it an extension of time until the next rule day in February to file its exceptions to the jurisdiction or such other responsive pleadings as it may desire to file in this cause.

The foregoing motion having been presented to the Court, it is ordered that the same be and it is allowed.

49 MOTION TO SELL COTTON.

Filed January 4, 1911.

United States District Court, Eastern District of Louisiana.

J. A. E. Pyle, Trustee,
vs. No. 14,241
Texas Transport & Terminal Company et als.

On motion of Dufour & Dufour and W. A. Percy, solicitors for complainant herein, and on suggesting to the Court that, on the —— day of May, 1910, at the suit of J. A. E. Pyle, receiver, the Texas Transport & Terminal Company and the Compagnie Generale Transatlantique were enjoined from removing from the jurisdiction of this Court certain cotton marked as follows: 100 bales R B T R, which said cotton was then loaded on the steamship "Texas;" and

On further suggesting that on the 16th day of August, in the within numbered and entitled cause and on the application of mover as trustee, this Honorable Court did grant a restraining order against the Texas Transport & Terminal Company and the Compagnie Generale Transatlantique, their agents and employees, prohibiting them from removing from the jurisdiction of the Court the cotton herein referred to until the application for the interlocutory injunction prayed for could be determined; and

On further suggesting to the Court that on the 2nd day of January, 1911, this Court granted the application for said interlocutory injunction and directed the issuance of said preliminary injunction against the said Texas Trans-
50 port & Terminal Company and the Compagnie Generale Transatlantique; and

On further suggesting to the Court that the original orders, entered herein on the application of the temporary receiver and on the application of the trustee, gave to all parties at interest the right to apply to this Court for permission to bond said cotton or to otherwise dispose of same, but that the defendants herein, to wit, Scheuch & Company and the Comptoir d'Escompte de Mulhouse, have failed to avail themselves of said privilege and right, and that the said Scheuch & Company has not entered any appearance, and that the Comptoir

d'Escompte de Mulhouse has only entered a limited appearance for the purpose of contesting the jurisdiction of the Court and objecting to the issuance of the preliminary injunction; and

On further suggesting that the Compagnie Generale Transatlantique and the Texas Transport & Terminal Company have appeared in this cause and pleaded and asked to be relieved of the charge for the said cotton; and

On further suggesting that the cotton herein should be sold and the proceeds deposited in the registry of the Court;

It is ordered, That the Texas Transport & Terminal Company and the Compagnie Generale Transatlantique, through their solicitor, Mr. George H. Terriberry, show cause on the 6th day of February, 1911, why the cotton in contest herein should not be sold and the proceeds deposited in accordance with the orders of this Court.

It is further ordered, That the Comptoir d'Escompte de Mulhouse, through its solicitors, Messrs. Denegre & Blair, be served with a copy of this motion.

51 MARSHAL'S RETURN ON MOTION TO SELL COTTON.

Filed January 6, 1911.

Received by U. S. Marshal, New Orleans, La., Jan. 5/11.

And on the 6th day of the same month I served copy hereof on the following parties in New Orleans, in the manner following, to-wit: On Denegre & Blair, by leaving same at their office in the hands of their stenographer, Chas. P. Gould.

On Geo. H. Terriberry, by leaving same at his office in the hands of his stenographer, F. E. Zimmerman.

(Signed) VICTOR LOISEL,
U. S. Marshal.

(Signed) By B. F. QUEEN,
Dep. U. S. Marshal.

52 BOND OF TRUSTEE ON INJUNCTION PENDENTE LITE.

Filed January 9th, 1911.

United States District Court Eastern District of Louisiana.

J. A. E. Pyle, Trustee,
vs. No. 14,241
Texas Transport & Terminal Company, et als.

Know All Men By These Presents: That we, J. A. E. Pyle, trustee of Steele, Miller & Company, bankrupt, appointed by and acting under authority of the District Court of the United States for the Northern District of Mississippi, as principal, and Southwestern Surety Insurance Company of Oklahoma, as surety, are held and firmly bound unto the Compagnie Generale Transatlantique, the Texas Transport & Terminal Company, F. Scheuch & Company and Comptoir d'Escompte de Mulhouse, defendants herein, for the use and benefits of defendants in the below mentioned suit, in the full and true sum of four hundred and twenty-five dollars ($425.00) lawful money of the United States of America, for the payment whereof we bind ourselves, our heirs, executors, successors and assigns firmly by these presents.

Thus done and signed in the City of New Orleans, State of Louisiana, this 9th day of January, A. D. 1911.

Now therefore the condition of the above obligation is such that

Whereas the said J. A. E. Pyle, trustee in bankruptcy of Steele, Miller & Company, did, in the proceedings No. 14,241 of the docket of the United States District Court for the Eastern District of Louisiana, entitled J. A. E. Pyle, Trustee, vs. Texas Transport & Terminal Company, et als., obtain an injunction pendente lite, restraining and enjoining the Texas Transport & Terminal Company and the Compagnie Generale Transatlantique, and each of them, and each of their servants, agents and employees until the further orders of the Court from removing from the jurisdiction of the Court
53 the 100 bales of cotton described in the pleadings filed in this case upon condition that the said trustee shall furnish bond.

Now, therefore, if the above mentioned J. A. E. Pyle, trustee, shall pay, or cause to be paid, all damages caused by the issuance of said injunction pendente lite, and the costs of this cause in connection therewith in the event that said injunction pendente lite is dissolved or vacated as having been wrongfully issued, or because the said acts are improperly enjoined, then this bond to be void, otherwise to remain in full force and effect.

J. A. E. PYLE, Trustee.
(Signed) By WM. C. DUFOUR, Solicitor.
SOUTHWESTERN SURETY INSURANCE CO.
(Signed) By JOS. BAYLE, Atty. in Fact. [Seal]

Approved.
(Signed) RUFUS E. FOSTER, Judge.

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54 DEMURRER TO JURISDICTION.

Filed, January 10, 1911.

United States District Court Eastern District of Louisiana.

J. A. E. Pyle, Trustee,
vs. No. 14,241
Texas Transport and Terminal Company, et als.

Now comes Comptoir d'Escompte de Mulhouse, made a defendant herein, and appearing specially under protest for the purpose of demurring to the jurisdiction of this Court, and for no other purpose, says the Court is without jurisdiction in this cause for the following reasons:

That it appears from the bill of complaint that this is a suit brought under Section 60, Subdivisions a and b of the Bankruptcy Act of the United States, being the Act of Congress, adopted July 1, 1898, and its amendments, to set aside the alleged voidable transfer to this defendant of certain cotton described in the bill of complaint; that it further appears from the said bill that this defendant, the transferee, is not a citizen or inhabitant or resident of this State or of the United

States, but is a citizen, inhabitant and resident of the Republic of France, and that it has not been personally cited or served with any process of Court in this cause; that it is not shown by the said bill that any of its co-defendants has any authority to stand in judgment for this defendant; that the bill fails to state a case within the jurisdiction of this Court to give the relief, either interlocutory or final, prayed for by complainant.

Wherefore, defendant prays that its demurrer be sustained and this cause dismissed, with reservation of this defendant's rights to recover its costs and all damages sustained from the injunctive orders heretofore rendered in this cause.

(Signed) DENEGRE & BLAIR,
Sols. for above named Defendants.

J. P. Blair, being duly sworn, deposes and says that he is of counsel for the said Comptoir d'Escompte de Mulhouse, which is absent from the State and unrepresented save by its said counsel and solicitors of record; that the foregoing demurrer was not filed for purposes of delay; and
55 affiant further states and certifies that in his opinion said demurrer is good in point of law.

(Signed) J. P. BLAIR.

Sworn to and subscribed before me this 10th day of January, 1911.

[Seal] (Signed) H. H. CHAFFE,
Notary Public.

56 HEARING AND ORDER—DEMURRER OVERRULED.

Extract From the Minutes.

November Term, 1910.

New Orleans, Friday, January 13th, 1911.

Court met pursuant to adjournment.

Present: Hon. Rufus E. Foster, Judge.

J. A. E. Pyle, Trustee,

vs. No. 14,241

Texas Transport and Terminal Company et al.

The demurrer filed by Comptoir d'Escompte de Mulhouse, a defendant herein, set for hearing this day, was called:

Present: Messrs. Dufour & Dufour, Solicitors for Complainant.

Present: Messrs. Denegre & Blair, Solicitors for Comptoir d'Escompte de Mulhouse.

Whereupon, after hearing the solicitors for the respective parties,

It is ordered that the said demurrer be, and it is hereby overruled.

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57 ANSWER OF THE COMPTOIR D'ESCOMPTE DE MULHOUSE.

Filed February 6th, 1911.

United States District Court, Eastern District of Louisiana.

J. A. E. Pyle, Trustee,

vs. No. 14,241

Texas Transport and Terminal Company et als.

Answer of the Comptoir d'Escompte de Mulhouse.

Now comes the Comptoir d'Escompte de Mulhouse, made one of the defendants herein, and not waiving but reserving

the benefits of its demurrer heretofore filed to the jurisdiction of this Court and not consenting to but protesting against the exercise of jurisdiction in this cause this defendant, now and at all times saving to itself any and all manner of benefit or advantage of exception or otherwise that can or may be had or taken to the many errors, uncertainties and imperfections in the said bill contained, for answer thereto, or to so much thereof as this defendant is advised it is material or necessary for it to make answer to, answering says:

1. It admits and avers that this defendant is and was at all times hereinafter set forth, and for sometime prior thereto, a banking institution duly incorporated and existing under the laws of the Republic of France, domiciled and engaged in the banking business in the City of Havre, France, including the purchase of cotton, as well as the furnishing and advancing of funds for the purchase thereof, and taking and holding title thereto.

2. It says that for want of sufficient information it can neither admit nor deny the allegations contained in paragraphs "Second" and "Third" of the complaint in respect to the domicile, membership and business of the firm of Steele, Miller and Company, the institution of proceedings of involuntary bankrutcy against said firm, the adjudication of bankruptcy, the appointment of complainant as receiver and his subsequent election as trustee in bankruptcy, and it leaves complainant to his proof thereof.

58

3. It denies the statement contained in paragraph "Fourth" of the complainant, that on or prior to April 15, 1910, the relations between Steele, Miller & Company and this defendant were those of debtor and creditor, Steele, Miller and Company being indebted to it in the sum of $7,120.45 in United States currency; it avers that it extended no credit and made no loans of money to Steele, Miller and Company, and that the obligation of Steele, Miller and Company on the date above named was not to pay this defendant a sum of money but to deliver or cause to be delivered to it one hundred bales of cotton which this defendant had already paid for, as will hereafter be more fully set forth.

It avers that it is not familiar with the fraudulent practices

of Steele, Miller and Company and is unable to affirm or deny the correctness of the statements in respect thereto found in paragraph "Fourth" of the complaint and leaves complainant to his proof thereof.

It admits and avers that sales and purchases of cotton are usually made and effected by the drawing and acceptance of drafts with bills of lading covering the cotton attached thereto; it avers that such drafts are accepted and paid under the belief that the title to and possession of the cotton so sold and purchased are vested in the acceptor by such acceptance and the delivery of the bill of lading.

4. It admits that the statements contained in paragraph "Fifth" of the complaint and Exhibit A thereof are substantially correct. It avers that said draft represented the purchase price of a lot of one hundred bales of cotton and an identifying description of said cotton by lot numbers and marks was set forth on the face of the draft, the same corresponding with the description in the bill of lading attached thereto. It denies that said draft was accepted and paid by it for the purpose of "buying the bill of lading thereto attached" as charged in said paragraph "Fifth," and avers
59 that the same was accepted and paid for the purpose of buying the cotton described in the draft as well as in the bill of lading and for the purpose of obtaining the bill of lading which it believed represented the cotton and the possession of which it believed gave it the title to and full dominion over the cotton; that it believed at the time that the bill of lading was genuine and that the cotton described therein and in the draft had been actually shipped at or about the date of said draft, but that, from the information received subsequent to May 7, 1910, and chiefly as a result of the investigations made in said bankruptcy proceedings, it now believes that said bill of lading was a forgery and that Steele, Miller and Company thus fraudulently deceived this defendant into believing that at the same time that it paid for the cotton by acceptance of the draft, it was receiving symbolically title to and possession of the cotton. It denies that it thus became a creditor of Steele, Miller & Company in a sum representing the amount of said draft; it avers, on the contrary, it became entiled to demand and receive from Steel, Miller and Company the one hundred bales of cotton which had been

paid for by said draft, and Steele, Miller and Company were legally bound to make good the default by securing, marking, forwarding and delivering to this defendant the cotton covered by said draft and purporting to be covered by said spurious bill of lading.

5. It admits that the statements contained in paragraph "Sixth" of the complaint in respect to the business of Scheuch and Company are substantially correct, except the statement that the one hundred bales of cotton referred to in the complaint were sold to Scheuch and Company. It believes, and so avers, that the legal and intended effect of the transaction in respect to said cotton was a transfer of the title and of full dominion over the same to this defendant who was the party that paid the seller the purchase price; that it is not material for the purposes of this suit whether the ultimate purchaser was this defendant or Scheuch and Company, since, in any event, Steele, Miller and Company agreed and bound itself to sell and deliver the said cotton, received the price thereoef, and, by subsequently shipping the cotton in question, simply carried out its aforesaid original obligations, and completely divested itself of the ownership and possession of said property.

6. For want of sufficient information it neither admits nor denies the statement in said paragraph "Sixth" in respect to the insolvency of Steele, Miller and Company, prior to April 1, 1910, and the issuance and negotiation by it of drafts with spurious bills of lading attached thereto to other persons in various parts of the world in an amount approximating 3,000,000 of dollars, and leaves complainant to his proof thereof. It especially denies that it knew of, or had any reasonable ground for suspecting, said insolvency or said fraudulent practices.

6. It admits that it is substantially correct, as stated in paragraph "Seventh" of the complaint, that on or prior to April 6, 1910, Steele, Miller and Company had collected or had in its possession 100 bales of cotton marked as stated in the complaint, which marks correspond with the marks of the cotton on the said draft and the bill of lading attached thereto, and that said cotton was then shipped by Steele, Miller and

Company under and [an] inland bill of lading to the order of Steele, Miller and Company, and that, when said cotton reached New Orleans, the said bill of lading was exchanged for an ocean bill of lading dated April 25, 1910, which two bills of lading in respect to the marks of the cotton covered thereby, the dates, etc., are described with substantial correctness in Exhibits B and C of the complaint; but this defendant ask leave to refer for greater certainty to said bills of lading or proven copies thereof which may be produced on the trial. It does not know, and has no means of knowing how long prior to April 6, 1910, Steele, Miller and Company had acquired, assembled and marked said cotton.

It avers that the acquiring, assembling and marking of said cotton as aforesaid had for its intended and legal effect to appropriate said cotton to the obligations of Steele,
61 Miller and Company under the said original transaction with this defendant, whereby it paid for said cotton and became entitled thereto; that the further legal and intended effect of said acts of Steele, Miller and Company was to give to this defendant the same right, title and interest in and to said cotton as it would have had if said cotton had been originally shipped under the original bill of lading attached to the draft as aforesaid.

It avers that it did not know and had no reason to believe or suspect, until the fraudulent practices of Steele, Miller and Company were disclosed to it through said bankruptcy proceedings some time subsequent to May 7th, 1910, that said cotton had not been shipped contemporaneously with the drawing of said draft; and, accordingly, it avers that the subsequent acts of Steele, Miller and Company to make good its default, perform its obligations, and deliver to this defendant the cotton it had paid for and was entitled to receive, were done and accomplished without its procurance or knowledge.

7. It again denies that on or about April 15, 1910, this defendant and Scheuch and Company, or either of them, were ordinary unsecured creditors of Steele, Miller and Company in the sum of $7,120.45, represented by the said draft with the forged bill of lading attached, and again avers that the obligation of Steele, Miller and Company was to deliver 100 bales of cotton, not to pay a certain sum of money. It admits and avers that on or about the date of its issuance Steele, Miller

and Company deposited in the United States mail said ocean or port bill of lading, representing said 100 bales of cotton, addressed to Scheuch and Company. It avers that said bill of lading was negotiable in form, to the order of Steele, Miller and Company and by it indorsed in blank, and represented said cotton that said bill of lading was mailed to Scheuch and Company for this defendant and that the deposit of said bill of lading in the mail operated at once a transfer of the title to and possession of said cotton to this defendant; that the acts of Steele, Miller and Company in obtaining and forwarding said port bill of lading was in furtherance of said
62 acts of appropriation and a performance and consummation of their original obligations in the premises. It avers that said port bill of lading was delivered into its physical possession by Scheuch and Company on May 7, 1910, and it has ever since had possession thereof as well as of the bill of lading attached to said draft.

It denies that the forwarding to it by Steele, Miller and Company of said port bill of lading was done with the intent to prefer it or Scheuch and Company, or either of them, over the other creditors of Steele, Miller and Company. It denies that when said bill of lading was mailed to Scheuch and Company for this defendant or when the same was received and delivered to this defendant, it knew of, ought to have known or had reasonable cause to believe that a preference was thereby given and intended; or knew of [or] had reasonable cause to believe that Steele, Miller and Company was insolvent. It denies that the performance by Steele, Miller & Company as aforesaid of its obligations to deliver the cotton which it had agreed to deliver and which it had been paid for constituted any preference within the meaning of the bankruptcy act. It denies that it constituted and [an] avoidable preference in favor of this defendant for the additional reason that it was unaware at the time of the acts of Steele, Miller and Company now charged to constitute a preferential transfer and because it believed and had reasonable cause to believe at the time that the cotton, the transfer of which to it is now sought to be avoided, was cotton shipped at the time of the drawing of said draft, had been fully paid for by it, belonged to it, and that it was justly and exclusively entitled thereto.

For want of sufficient information it neither affirms nor denies the statements contained in said paragraph "Eighth" in

respect to the insolvency of Steele, Miller and Company and leaves complainant to his proof thereof. It denies that it knew or should have known at the time of the transfer to it of said cotton that Steele, Miller and Company was insolvent. It avers that even knowledge of such insolvency would
63 not have given it reasonable cause to believe that it was being given a preference because, as it again states, it was unaware of the original default and subsequent acts done to make good the default and because, had it known thereof, it would still reasonably have believed that it was justly entitled to the cotton it had paid for, whether Steele, Miller and Company was insolvent or not at the time of the shipment thereof.

8. It admits that the statements contained in paragraph "Ninth" of the complaint are substantially correct, but it asks leave to refer to the proceedings in said cause No. 14,219 of Pyle vs. Philip Landgren for greater certainty as to the location of the cotton at the date of the institution of said cause and as to its subsequent disposition.

9. Further answering, this defendant says that for more than three years past Steele, Miller and Company has been engaged in the business, among other things, of selling cotton to or through Scheuch and Company, a commercial firm, which is now and was at all times hereafter set forth and for some time prior thereto, domiciled and engaged at Havre, France, in the business of buying, selling and importing cotton; that, according to the regular course of business, cotton, the sale of which had been negotiated, would be shipped by Steele, Miller and Company under through bills of lading to shipper's order, notify Scheuch and Company, each of which bills of lading, being for one hundred bales, indorsed in blank by shippers, would be forwarded to Havre attached to a draft for the full price of the cotton covered thereby (less freight, insurance and six per cent. loss in weight) drawn by Steele, Miller and Company on some bank in Havre which had agreed to take and pay for the said cotton, the cotton being described in the draft, as well as in the bill of lading, by number of bales and marks, which is the customary method of describing and identifying lots of cotton intended to be sold; that said documents would be presented to the drawee bank in France by

some third person for Steele, Miller and Company, and it was the intended and legal effect of the acts and doings of the parties in the premises that, on the acceptance of any
64 such drafts (the same being sixty or ninety days drafts) title to the cotton, described as aforesaid in the drafts and in the bill of lading should thereupon become vested in the person obligating himself by such acceptance to pay the price thereof, and the indorsed bill of lading was surrendered at the time to the acceptor of the draft as one of the means of tranferring title and possession and as evidence thereof and to enable the holder to obtain possession of the cotton from the carrier on arrival at Havre. That during the period aforesaid of upwards of three years many thousands of bales of cotton were shipped and disposed of by Steele, Miller and Company, and paid for and possession thereof secured through bills of lading and drafts as aforesaid, there being always attached to the bill of lading a certificate [of] or insurance and an invoice showing correspondence of the amount of the draft with the price of the cotton, and in many of said transactions this defendant, the Comptoir d'Escompte de Mulhouse, was the drawee of the draft and accepted and paid the same, and received the cotton in due course from the ocean carrier on surrender of the bill of lading.

That in the regular course of business which had been going on as aforesaid for a number of years, Steele, Miller and Company on January 31, 1910, drew on this defendant a certain draft dated at Corinth, Mississippi, to drawer's order and by them indorsed in blank, payable ninety days after sight, numbered 2143, for 37,097.55 francs, and reciting that it was drawn against 100 bales of cotton marked R B T R 1/100.

That the above described draft was presented to this defendant at Havre for acceptance and was by it accepted on February 12, 1910, and afterwards when it became due was paid in full by this defendant; that to said draft there was attached what purported to be a through bill of lading covering the same cotton described in the draft and an invoice showing correspondence between the amount of said draft and the price to be paid for the cotton, together with an insurance certificate in the usual form, all of which documents were surrendered to this defendant on the acceptance of the draft.

That, believing and relying upon the representa-
65 tions conveyed and the obligations imposed by the

drawing and forwarding of said draft with the documents attached, and believing that said cotton had actually been shipped and that acceptance of said draft, as well as the possession and ownership of the bill of lading (obtained through such acceptance) would transfer to it the title to said cotton and the right to receive the same on its arrival, this defendant accepted said draft (which it subsequently paid) and accepted the transfer and delivery of the bill of lading, with the attached certificate of insurance and invoice, which documents are still in its possession.

That no part of said cotton has ever come into the hands of this defendant except through the constructive delivery and possession effected by its holding and ownership of the bill of lading representing the same as herein set forth; that while it was awaiting the arrival of said cotton it received by mail from Steele, Miller and Company, through Scheuch and Company, on May seventh, 1910, the bill of lading issued as aforesaid by the Compagnie Generale Transatlantique acknowledging the receipt from Steele, Miller and Company of the said lot of one hundred bales, with the said identifying marks, for shipment to Havre and delivery there to shipper's order, notifying Scheuch and Company, which bill of lading was indorsed in blank by Steele, Miller and Company, forwarded at or about the date of its issuance, and has ever since been, and now is, in the possession of this defendant. That the next news this defendant received concerning the said cotton was the cable report of the aforesaid proceedings instituted on May 7th, 1910, which resulted in the injunction restraining the master of the steamship "Texas" and its aforesaid owner and agent from removing said one hundred bales and other cotton out of the jurisdiction of this Court, on the ground that the shipment of said cotton by Steele, Miller and Company constituted the

66 giving or attempt to give a preference, or an attempt to hinder and delay their creditors in violation of the bankruptcy laws of the United States; and this defendant learned from the report of said proceedings for the first time that it was alleged or charged that the original through bill of lading attached to the draft paid by it was a forgery, and it then for the first time had reasonable cause to believe that the said one hundred bales of cotton which it had paid for as aforesaid had not been shipped on the date it had until then believed the same to have been shipped, namely,

on the date of the original through bill of lading. This defendant accordingly avers that, if it be true that said bill of lading attached to said draft was forged and spurious, and if Steele, Miller and Company did not deliver the cotton described there to the said railroad company at the date of said bill of lading, but at a subsequent date, this defendant was in entire ignorance thereof, and never knew and had no reasonable cause to believe, that it had been the victim of any such fraud until after the proceedings in this Court against Steele, Miller and Company had been instituted between May 7th and 13th, 1910, and brought to its attention; that until such proceedings it rested secure in the belief that the cotton it had paid for was on its way to Havre and would be delivered to it on surrender of said through bill of lading.

That subsequent investigation, in the light of the disclosures evoked by the bankruptcy proceedings of Steele, Miller and Company, has led this defendant to believe that the said one hundred bales of cotton were not delivered to the said railroad company at the date of said through bill of lading; and it avers that Steele, Miller and Company either had said cotton in its possession at the time or subsequently acquired the same for the purpose of delivering it to this defendant; and that at some time prior to April 6, 1910, Steele, Miller and Company marked said cotton to correspond with said draft and attached documents for the purpose and with the effect of appropriating the same to said draft and the rights of this defendant in the premises; and in further appropriation of said cotton
67 and in further performance of its obligation to deliver the same to this defendant from it had received full payment therefor, Steele, Miller and Company, as this defendant is informed and believes, delivered said one hundred bales of cotton so marked to the said railroad company for transportation to the port of New Orleans, and thence by steamship of the "French Line" for transportation to Havre and delivery to this defendant.

That said cotton reached the port of New Orleans prior to April 25, 1910; that Steele, Miller and Company, then acting through its local agents or representatives, delivered up the railroad bill of lading under which the cotton had been brought to New Orleans and received in exchange therefor the said bill of lading issued by the Compagnie Generale Transatlantique as aforesaid and transmitted the same to this defendant;

that the actual and intended effect of the aforesaid acts and doings of Steele, Miller and Company was to deliver to this defendant the said one hundred bales of cotton, to the delivery of which it was entitled and the purchase price of which it had fully paid, as long ago as February, 1910.

That the fact that the said original through bill of lading was forged or spurious did not destroy, or essentially alter the nature of, the rights and obligations of the parties; that Steele, Miller and Company became bound, if they did not have the cotton, to acquire the same and deliver it to this defendant, and this defendant became entitled to said cotton as soon as acquired and appropriated to the obligation arising out of the aforesaid transactions; that accordingly this defendant became entitled to said 100 bales of cotton as soon as Steele, Miller and Company made a definite and specific appropriation thereof in fulfillment of their aforesaid obligation, which was done as soon as that firm selected said one hundred bales of cotton and marked the same to correspond with said first railroad bill of lading and the draft to which it was attached, and certainly was such appropriation effected when it subsequently
68 delivered said cotton so marked to the carrier for transportation to New Orleans and thence to Havre, for the purpose of being delivered to this defendant, by whom the cotton had already been fully paid for as aforesaid; and the deliverey and transfer of said cotton to this defendant was consummated and perfected by the delivery of the same to the ocean carrier and the forwarding of said ocean bill of lading therefor to this defendant.

That, prior to the institution of said cause No. 14,219, and prior to any bankruptcy proceedings anywhere against Steele, Miller and Company, said firm had received payment in full for said cotton and had completely divested itself of the title, ownership and possession of said cotton, and the same had been completely vested, as aforesaid, in this defendant; that at the time when this defendant acquired its right or title to said cotton it did not know and had no reasonable ground for believing that a preference was being given or intended by the transfer to it of such right and title; that accordingly its right and title to said cotton is superior to that of the complainant trustee.

10. It avers that it has fully set forth the facts consti-

tuting the transactions between it and Steele, Miller and Company and that it has a right to ask this Honorable Court, as it now does, to define, recognize and enforce its rights in, to or in respect to said cotton; that whether it has the full and complete title thereto, as it is advised and so claims, or whether it has a qualified ownership or special property therein, or an equitable lien or charge or a right in the nature of a pledge, its rights or title to said cotton were not created by any voidable or preferential transfer, are superior to any rights or title of complainant and entitle it to be awarded said cotton or its proceeds and to a dissolution of the injunctive and restraining orders heretofore issued in this cause, as well as in said cause No. 14,219.

11. It avers that by the procuring or issuing of said alleged spurious through railroad bill of lading for said cotton and forwarding the same to it with said draft attached
69 and accepting the proceeds of said draft, Steele, Miller and Company warranted its title to said cotton and that the same had been delivered to the carrier for this defendant and is estopped to deny the same and is estopped to deny this defendants rights and title to the cotton after the same was selected, marked and appropriated as aforesaid, and this estoppel operates equally against the complainant trustee and the general creditors of Steele, Miller and Company and all other persons who are disputing this defendant's rights to said cotton.

12. This defendant respectfully submits that the restraining and injunctive orders issued in said cause No. 14,219 and in this cause were improvidently ordered; that this Court is and was without jurisdiction to render the same or to give complainant the relief he seeks; that at the time of the institution of said cause No. 14,219 and of the present suit, the bankrupts, Steele, Miller and Company, had parted with both the ownership and the possession of the said one hundred bales; that neither the receiver nor the trustee in bankruptcy has or had any right to proceed in rem against said property; that his only remedy was and is a personal suit against the creditors alleged to have received the prohibited preference, and this Court has not and never had, and jurisdiction in personam over this defendant; that the appearance which this defendant

has been compelled to make under protests to protect its property as aforesaid should not be constructed and cannot be constructed as a voluntary appearance giving this Court full jurisdiction over it.

This defendant further submits that should this Court maintain its jurisdiction to decide upon the merits the issues presented herein, then this defendant is entitled to be awarded the said cotton or its proceeds.

This defendant specially reserves all its rights and claims against the owners and agents of the steamship "Texas," and against said vessel, which it may have in the premises, and especially as the holder and owner of the said port or
70 custody bill of lading.

Wherefore, this defendant prays that said bill of complaint be dismissed for want of jurisdiction in this Court to grant the relief prayed for, the restraining orders and injunction heretofore issued being dissolved, and a reference ordered to ascertain the damages this defendant has sustained by reason of said injunctive orders and its right to recover the same reserved.

And in the alternative, if its objections to the jurisdiction be overruled, this defendant prays that complainant's demands be rejected and that this defendant be decreed to be entitled to the within described one hundred bales of cotton and that the same be ordered to be delivered to it, or be permitted to be transported by a steamship of the said Compagnie Generale Transatlantique to Havre under and in accordance with the said bill of lading issued by said company. And, likewise, in the alternative, this defendant prays that if this Court rejects its claim to the ownership and possession of said cotton then that the Court will recognize and enforce such special property or equitable lien or charge or other right in or to said cotton or its proceeds to which this defendant is entitled in the premises and which to the Court shall seem meet and just, and for such other and general relief as may be just and equitable.

(Signed) DENEGRE & BLAIR,
Solicitors for Defendant, The Comptoir d'Escompt de Mulhouse.

71 RULE TO RELEASE COTTON ON BOND, ETC.

Filed February 6, 1911.

United States District Court, Eastern District of Louisiana, New Orleans Division.

J. A. E. Pyle, Trustee,
vs. No. 14,241.
Texas Transport and Terminal Company, et als.

On motion of Denegre and Blair, solicitors for the Comptoir d'Escompte de Mulhouse, a defendant herein, still appearing as heretofore under protest and reserving the benefit of its demurrer to the jurisdiction of this Court, and, on suggesting to the Court that said defendant desires to release the cotton referred to in the complainant's bill from the operation of the injunctive orders herein rendered by substituting a bond therefor so that said cotton may be free from any claims of any of the parties to this cause and from any costs or charges growing out of this cause.

It is ordered that the complainant and defendants, the Texas Transport and Terminal Company and the Compagnie Generale Transatlantique show cause on Friday, February 10, 1911, at 11 A. M. why said cotton should not be released and delivered to said defendant or the Compagnie Generale Transatlantique for transportation to Havre and delivery to this defendant or the holder of the bills of lading of said Compagnie Generale Transatlantique issued therefor, free from all claims of the parties hereto whether for the cotton or for any costs, expenses or damages incurred or sustained in consequence of this litigation, on this defendant furnishing a bond in favor of complainant, with surety approved by the Court, for the value of said cotton, conditioned upon this defendant producing the said cotton or so much thereof as this Court in this cause may decree the said Trustee, complainant, to be entitled to or paying to said trustee, complainant, the value of said cotton or of the part thereof to which he may be decreed to be entitled by this Court in this cause, the value to be the value at the time of the release as shown by the amount of the bond; the bond to take the place of the cotton and the giving of the bond to be otherwise without prejudice to the

72 status, rights or obligations of any of the parties to this cause.

Feb. 6, 1911.

Service accepted.

(Signed) WM. C. DUFOUR,

(Signed) GEO. H. TERRIBERRY, Atty.

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73 ORDER CONTINUING MOTION TO SELL COTTON INDEFINITELY.

Extract From the Minutes, November Term, 1910.

New Orleans, Monday, February 6th, 1911.

Court met pursuant to adjournment.

Present: Hon. Rufus E. Foster, Judge.

J. A. E. Pyle, Trustee,

vs. No. 14,241.

Texas Transport & Terminal Company, et al.

The motion of complainant to sell the cotton enjoined herein, set for hearing this day, was called.

Present: Messrs. Dufour & Dufour, Solicitors for Complainant, Mover.

Present: George H. Terriberry, Esq., Solicitor for Texas Transport & Terminal Co., et als., Defendants.

Present: Messrs. Denegre & Blair, Solicitors for Comptoir d'Escompte de Mulhouse, Defendant.

Whereupon, after hearing the parties, it is ordered that the said motion be continued indefinitely.

74 ORDER FOR DELIVERY OF COTTON ON BOND FILED FEBRUARY 10, 1911.

United States District Court, Eastern District of Louisiana, New Orleans Division.

J. A. E. Pyle, Trustee,
vs. No. 14,241.
Texas Transport and Terminal Company, et als.

The rule taken by the Comptoir D'Escompte de Mulhouse, a defendant herein, for leave to release the cotton referred to in complainant's bill from the operation of the injunctive orders herein entered by substituting a bond thereof, came on this day to be heard and was argued by counsel, the plaintiff in rule, the Comptoir d'Escompte de Mulhouse, being represented by Denegre and Blair, its solicitors or [of] record, the complainant, J. A. E. Pyle, trustee, by Dufour and Dufour, his solicitors or [of] record, and defendants, the Texas Transport and Terminal Company and the Compagnie Generale Transatlantique, by George H. Terriberry, their solicitor of record; and the Court being fully advised in the premises, it is ordered that the one hundred bales of cotton referred to in the complaint herein and hereafter more particularly described shall be released from the operation of the injunction or restraining orders herein issued or heretofore issued by this Court on the said Comptoir d'Escompte de Mulhouse furnishing a bond in favor of the complainant trustee, with surety approved by the Court, for the value of said cotton conditioned upon the Comptoir d'Escompte de Mulhouse producing the said cotton or so much thereof as this Court in this cause may decree the said complainant trustee to be entitled to or paying the said complainant trustee the value of said cotton or the part thereof to which he may be decreed to be entitled by this Court in this cause, the value to be the value at the time of the release as shown by the amount of the bond, the cotton covered by this order being numbered and marked as follows:

R. B T R 1/100.

75 It is further ordered that on said bond being furnished the cotton shall be released and discharged from all claims of any party to this cause and especially from all claims for any costs, expenses or damages grow-

ing out of this litigation or any injunctive orders of this Court, the bond to take the place of the cotton and the giving of the bond to be otherwise without prejudice to the status, rights or obligations of any of the parties to this cause.

It is further ordered that the aggregate value of said one hundred bales of cotton is hereby fixed at seventy-four hundred and thirty-seven and 50/100 dollars ($7,437.50) all parties consenting to said valuation, and the amount of the bond herein authorized is fixed at said sum of $7,437.50. It is further ordered that when the bond herein provided for shall have been furnished, the cotton so released shall be free from all costs, charges and expenses, including expense of insurance, drayage and storage, and said expense of insurance, drayage and storage if not previously paid by the trustee as herein provided, shall be taxed as costs is [in] this suit and shall be recoverable under the bonds heretofore given by the trustee. It is further ordered that the trustee forthwith apply to the Honorable H. C. Niles, United States Judge for the Northern District of Mississippi for authority to pay the Compagnie Generale Transatlantique the said storage charges and insurance premiums which the Compagnie Generale Transatlantique has either paid out or become liable for in preserving the said cotton, and when said trustee is so authorized, he shall have the right to apply to the Court for a proportionate reduction of the several bonds heretofore furnished by him to the extent of said cash payments.

It is further ordered that on defendant, the Comptoir d'Escompte de Mulhouse, filing with the clerk of this Court a bond of the character and amount above provided for, and which has been approved by this Court or a Judge thereof, all injunctive orders of this Court in respect to said cotton
76 shall be released and dissolved, and the clerk of this Court is directed then to so notify the defendants, the Compagnie Generale Transatlantique and the Texas Transport and Terminal Company.

Feb. 10/11.

(Signed) RUFUS E. FOSTER, Judge.

O. K.

(Signed) J. P. B.
(Signed) G. H. T.
(Signed) W. C. D.

77 RELEASE BOND OF THE COMPTOIR d'ESCOMPTE DE MULHOUSE.

Filed February 15th, 1911.

United States District Court, Eastern District of Louisiana.

J. A. E. Pyle, Trustee,
vs. No. 14,241.
Texas Transport & Terminal Company, et als.

Know all men by these presents, that we, the Comptoir d'Escompte de Mulhouse, as principal obligor, and the American Surety Company of New York, as surety, are held and firmly bound, jointly and severally, unto J. A. E. Pyle, trustee in bankruptcy for Steele, Miller & Company, Bankrupts, in the sum of seven thousand, four hundred and thirty-seven dollars and fifty cents ($7,437.50) for the payment whereof well and truly to be made we bind ourselves, our heirs, executors, administrators and successors, jointly and severally firmly by these presents.

Signed and sealed this 14th day of February, A. D. 1911.

The condition of this obligation is such that,

Whereas, in a certain cause now pending in the United States District Court for the Eastern District of Louisiana, New Orleans Division, No. 14241 of the docket of said Court and entitled, "J. A. E. Pyle, Trustee, vs. Texas Transport & Terminal Company, et als.," the said Pyle made claim to one hundred bales of cotton fully described in the pleadings in said cause, and obtained from said Court an order or injunction prohibiting the removal of said cotton from the jurisdiction of this Court, and

Whereas, on the tenth day of February, 1911, an order was rendered in said cause giving leave to the said Comptoir d'Escompte de Mulhouse to release the said cotton from the operation of said injunction by substituting a bond therefore:

Now therefore, if said United States District
78 Court in said cause shall decree that the said obligee, the trustee in bankruptcy, is entitled to said cotton or any part of it, and if the said Comptoir d'Escompte de Mulhouse shall produce said cotton or the part thereof to which the obligee may be so decreed to be entitled, or pay to the

obligee the value of said cotton, or of the part thereof to which the obligee may be so decreed to be entitled, the value to be the value at the time of the release as shown by the amount of the bond, then this obligation shall be null and void; otherwise to be of full force and affect [effect].

COMPTOIR D'ESCOMPTE DE MULHOUSE,
By (Signed) J. P. BLAIR, Attorney in Fact.
AMERICAN SURETY COMPANY OF NEW YORK,
By (Signed) J. H. FULTON,
Resident Vice-President.
Attest: (Signed) PETER F. PESCUD,
(Seal) Resident Assistant Secretary.
Approved.
(Signed) RUFUS E. FOSTER, Judge.
Approved.
(Signed) W. C. DUFOUR. 5034

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79 REPLICATION TO ANSWER OF COMPTOIR D'ESCOMPTE DE MULHOUSE.

Filed March 6th, 1911.

United States District Court, Eastern District of Louisiana.

J. A. E. Pyle, Trustee,
vs. No. 14,241.
Texas Transport & Terminal Company, et als.

The replication of J. A. E. Pyle, trustee Steele, Miller & Company, to the answer of the Comptoir D'Escompte de Mulhouse:

This repliant, saving and reserving unto himself all and all manner of advantage of exception to the manifold insufficiencies of said answer, for replication thereunto saith:

That he will aver and prove his said bill to be true, certain and sufficient in the law to be answered unto, and that the

said answer of the said defendant is uncertain, untrue and insufficient to be replied unto by this repliant; without this, that any other matter or thing whatsoever in the said answer contained, material or effectual to be replied unto, confessed and avoided, traversed or denied, is true; all which matters and things this repliant is and will be ready to aver and prove as this Honorable Court shall direct and humbly prays as in and by his said bill he hath already prayed.

(Signed) W. A. PERCY.
(Signed) DUFOUR & DUFOUR.

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80 ANSWER OF THE TEXAS TRANSPORT & TERMINAL COMPANY AND OF THE COMPAGNIE GENERALE TRANSATLANTIQUE.

Filed June 15th, 1911.

United States District Court, Eastern District of Louisiana.

J. A. E. Pyle, Trustee,
vs. No. 14,241. In Equity.
Texas Transport & Terminal Company, et als.

The joint and several answers of Texas Transport and Terminal Company and of Compagnie Generale Transatlantique:

Now comes Texas Transport & Terminal Company and Compagnie Generale Transatlantique, made defendants herein, and these defendants now at all times saving to themselves any and all manner of benefit or advantage of exception or otherwise that can or may be had or taken to the many errors, uncertainties and imperfections in the said bill contained, for answer thereto, or to so much thereof as these defendants are advised it is material or necessary for them to make answer unto, answering, say:

1. They admit that the Compagnie Generale Transatlantique is a corporation created under the laws of the Republic

of France, with its domicile in the City of Paris, France, and that Texas Transport & Terminal Company is a corporation organized under the laws of the State of New Jersey; that Compagnie Generale Transatlantique is a common carrier by sea and operates a line of steamers between New Orleans, in Louisiana, and Bordeaux and Havre, in France.

2. They say that, for want of sufficient information, they can neither admit nor deny the allegations contained in the second, third, fourth, fifth and sixth paragraphs of the complaint, relative to the domicile, the business, and the various transactions of Steele, Miller & Company.

3. They say that they believe that the allegations of the seventh paragraph of the complaint are substantially true.

81 4. For want of sufficient information, they can neither deny nor admit the allegations in the eighth paragraph of the complaint relative to the relations and transactions between Steele, Miller & Company and Scheuch & Company or between Steele, Hiller & Company and the Compitor d'Escompte de Mulhouse.

5. Answering the ninth paragraph of the complaint, they say that it is true that on the 7th day of May, 1910, there was on board the steamship "Texas," which said steamer belongs to defendant, Compagnie Generale Transatlantique, 2494 bales of cotton, shipped by Steele, Miller & Company to Havre, shipper's order, notify Scheuch & Company, Havre; that, in the case of J. A. E. Pyle, Receiver, vs. Philip Landgren, Master, Steamship Texas, et als., No. 14219 of the docket of the United States District Court for the Eastern District of Louisiana, these defendants were enjoined pendente lite from taking said cotton out of the jurisdiction of the Court. These defendants admit that they caused said cotton, at the expense of said Pyle, receiver, to be discharged from said steamer so that the steamer could proceed on her voyage as she was prepared, ready, and going to do when restrained on May 7, 1910, and enjoined on May 9, 1910; they admit that they caused said cotton to be stored in the Kentucky Warehouse, at New Orleans, and they show that they caused

said cotton to be insured for the benefit of whom it might concern while the said cotton was so stored.

6. They admit the truth of the allegations contained in the tenth paragraph of the complaint, relative to the refusal of those defendants to deliver said cotton to any person other than the holder of the bills of lading covering same.

7. The defendant, the Compagnie Generale Transatlantique, is sorely [solely] and only a common carrier by sea; it has no relation with said cotton except as a common carrier; that it has, as in duty bound and as by law required,
82 obeyed all of the orders of this Honorable Court, in the various cases of Pyle, Receiver, vs. Philip Landgren, Master, Steamship Texas, et als., No. 14,219 of the docket of this Court, and in the cases of Pyle, Trustee, vs. Texas Transport & Terminal Company, et als., numbered, respectively, 14,240, 14,241, 14,242, 14,243 and 14,277 of the docket of this Court; defendants show that the said injunctions remained in force and were obeyed by these defendants until they were, on the 15th day of February, 1911, notified by Frank H. Mortimer, clerk of court, that all injunctive orders in respect of said cotton were released and dissolved; that, thereupon, the Compagnie Generale Transatlantique carried said cotton forward by its first steamer, the Guatemala, and delivered the said cotton to the holders of its bills of lading in Havre, France, and took its said bills of lading on delivering said cotton, its bills of lading being thus accomplished and the responsibility and liability of the Compagnie Generale Transatlantique, and of its agent, the Texas Transport & Terminal Company, in respect of said cotton, being thereupon terminated.

Now, the defendant, the Compagnie Generale Transatlantique, shows that, in obeying the various orders of this Honorable Court, it sustained damages and incurred expenses, which in equity, law, and justice, the Court should require the complainant herein to pay to said defendant. That the damages so sustained by said Compagnie Generale Transatlantique, as a result of the aforesaid injunctive orders of this Court, are as follows:

(1) In dead freight on said 2494 bales of cotton, which

cotton was delivered to and placed on board of the steamship Texas, and which said cotton was subsequently discharged, the said steamer proceeding on her voyage without said cargo and without and [any] substitute therefor, the amount of said dead freight being $3310.53.

(2) In the cost of insurance on said 2494 bales of cotton while in the Kentucky Warehouse from May 10.
83 1910, to March 9, 1911, paid out in cash by said Compagnie Generale Transatlantique, which amounted to the sum of $2621.54.

(3) In cost of drayage of said cotton from steamer Texas to Kentucky Warehouse, the storage in said warehouse from May 12, 1910, to March 9, 1911, the drayage to the steamer Guatemala, and remarking the said cotton, for all of which the said Compagnie Generale Transatlantique owes the said Kentucky Warehouse and is bound to pay, amounting to the sum of $2682.55.

(4) In the cost of detention of the steamer Texas at New Orleans for nine days while her cargo was being discharged and reloaded, so as to comply with the injunction of May 9, 1910, the sum of $1,667.20.

(5) The difference between the current rate of freight, that is, thirty-seven (37) cents per one hundred pounds, applying when said cotton was carried forward to destination by the steamship Guatemala, on March 16, 1911, and the bill of lading rate, that is, twenty-six (26) cents per hundred pounds, on 2094 bales weighing 1,055,761 pounds, and twenty-eight (28) cents per hundred pounds on 400 bales weighing 201,943 pounds, at which rate this defendant was, under its said contracts, obligated to carry said cotton, the said difference amounting, in the aggregate on the 2494 bales, the sum of $1343.08.

(6) The Compagnie Generale Transatlantique has had to employ an attorney-at-law for counsel throughout these matters and also to recover the damages aforesaid, and it prays the Court to allow it a reasonable sum as counsel fees.

The defendant, the Compagnie Generale Transatlantique,

shows that, in equity, justice, and law, it should have a decree in its favor and against the complainant in full of all of said damages, with legal interest from the time said damages were sustained until paid.

Wherefore, these defendants pray that the said
84 bill of complaint be dismissed as against these defendants, and for costs; the defendant, the Compagnie Generale Transatlantique, prays that there may be a decree in its favor and against the complainant for all the damages sustained, with legal interest thereon from the time said damages were sustained until paid, as fully set out in this answer; these defendants further pray for all such other and general relief as they may, in equity and law, be entitled to receive and the Court competent to grant.

(Signed) GEO. H. TERRIBERRY,
Solicitor for Defendants, Texas Transport & Terminal Company and Compagnie Generale Transatlantique.

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85 AMENDED ANSWER.

Filed August 29, 1911.

In the District Court of the United States for the Eastern District of Louisiana.

J. A. E. Pyle, Trustee,
vs. No. 14,241. In Equity.
Texas Transport & Terminal Company, et al.

And now come Texas Transport & Terminal Company and Compagnie Generale Transatlantique, the defendants in the above cause, and leave of Court being first had, file the following amendment to the answer filed in this cause on the 15th day of June, A. D. 1911, to-wit:

After the conclusion of the seventh article of the answer, add the following allegations:

"The defendant, the Compagnie Generale Transatlantique, further shows that. for the damages aforesaid, it has a lien

and privilege on all of the 2494 bales of cotton which were on board its said steamer Texas, but that, as a bond was furnished by the defendant herein, the Comptoir d'Escompte de Mulhouse, equal to the value of the cotton covered by bills of lading held by it, the said bond to stand in the place and stead of the said cotton and, as it was ordered by the Court, at the suggestion of all parties hereto, that all claims against said cotton should be referred to said bond, to claim of said Compagnie Generale Transatlantique against said cotton and the lien and privilege in its favor on said cotton now holds and applies as against said bond so filed by the defendant herein, Comptoir d'Escompte de Mulhouse said bond standing in the place and stead of said cotton," and amend the prayer of said answer so as to read as follows:

"Wherefore, these defendants pray that the said bill of complaint be dismissed as against them, and for costs;
86 the defendant, the Compagnie Generale Transatlantique, prays that there may be a decree in its favor and against the complainant for all the damages sustained, with legal interest thereon from the time said damages were sustained until paid, as fully set out in this answer; and, in the alternative, the defendant, the Compagnie Generale Transatlantique, prays that if this said Court rejects its claim for damages, attorney's fees and interest against the complainant herein, then that the Court will grant and award such claim for all such damages, attorney's fees and interest against said cotton, or its proceeds, or the bond aforesaid standing in lieu thereof, with full recognition of its lien and privilege on said cotton or its proceeds or the bond which stands in lien [lieu] thereof, as this defendant may be entitled to have in the premises and which to the Court shall seem meet and just, and for such other and general relief as to the Court shall seem proper.

(Signed) GEO. H. TERRIBERRY,
Sol. for Texas Transport & Term. Co. and Compagnie Gen. Transatlantique.

(Order.)

Let the foregoing amended answer be filed.

(Signed) RUFUS E. FOSTER,
United States Judge.

87 HEARING IN PART AND CONTINUANCE.

Extract From the Minutes, November Term, 1911.

New Orleans, Monday, November 20th, 1911.

Court met.

Present: Hon. Rufus E. Foster, Judge.

J. A. E. Pyle, Trustee,
vs. No. 14,241.
Texas Transport and Terminal Company, et als.

This cause came on to be heard this day upon the pleadings and proofs as specified in the notes of evidence offered in behalf of the respective parties:

Present: Messrs. Dufour & Dufour and W. A. Percy, Solicitors for Complainant.

Present: George H. Terriberry, Esq., Solicitor for Texas Transport & Terminal Co. and Compagnie Generale Transatlantique, Defendants.

Present: Messrs. Denegre & Blair, Solicitors for Comptoir d'Escompte de Mulhouse, Defendant.

and was heard in part, and continued until Tuesday, November 21st, 1911, at ten o'clock A. M., for further argument.

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88 NOTE OF EVIDENCE OF COMPLAINANT.

Filed November 20th, 1911.

United States District Court, Eastern District of Louisiana.

J. A. Pyle, Trustee,
vs. No. 14,241.
Texas Transport & Terminal Company, et als.

Solicitors for complainant offer, produce, read and file in evidence in this case the following:

Stipulation of counsel as to the use in causes Nos. 14,240,

14,241, 14,242, 14,243 and 14,277 of the evidence taken and filed in any one of said causes.

Stipulation of counsel as to testimony of W. E. Kennedy.

The testimony of Edward S. Elliott.

The testimony of W. H. Hendren, together with the exhibits attached thereto, the first of said exhibits being attached to the record herein filed and marked "Complainant-26"; the second being Exhibit "No. 11," to-wit, cables offered in connection with the testimony of W. H. Hendren.

The testimony of Bernard Dessommes, together with exhibit, to-wit, copies of the Havre Bulletin of date April 27, 1910, and April 28, 1910, the said exhibit being attached to an affidavit of Wm. C. Dufour filed and used in connection with the proceedings for a preliminary injunction, and now made Exhibit "15."

The testimony of Henry E. Bory, together with the same exhibit offered in connection with the testimony of Bernard Dessommes.

The testimony of John H. Fulton, A. Breton, Jeff D. Hardin, Jr., together with the statement entitled "Loading Record," furnished by the said Jeff D. Hardin, Jr., which said exhibit is marked Exhibit "No. 10."

The testimony of C. H. G. Linde, together with Exhibit "1," being a letter from Scheuch & Company of date January 20, 1910; Exhibit "2," a letter from Scheuch & Company of date April 26, 1910; Exhibit "3," a letter from
89 Scheuch & Company of date March 22, 1910; Exhibit "4," a statement from Scheuch & Company of date April 2, 1910; Exhibit "5," a letter from Scheuch & Company of date April 1, 1910; Exhibit "6," cablegram to Scheuch & Company of date April 28, 1910; Exhibit "7," statement of drafts drawn by Steele, Miller & Company on Scheuch & Company and claimed by Linde to have been taken up April 29, 1910; Exhibit "8," a statement of Scheuch & Company of date April 29, 1910.

The testimony of Charles Janvier, Thomas Holford, together with extract from the Liverpool Daily Post & Mercury of April 22, 1910, attached to the affidavit of Wm. C. Dufour used in the proceedings on the application for a preliminary injunction, the said exhibit being marked " ."

The testimony of Edward S. Butler.

The testimony of Edward D. Nicholson.

All of said testimony being taken before Frank H. Mortimer, special examiner, at his office in the City of New Orleans, on the 7th, 9th, 15th, 16th and 22nd days of June, 1911.

A certified copy of the proceedings in the case of S. B. & E. Cohn, et al., vs. L. C. Steele, et al., No. 157 in Equity of the docket of the United States Circuit Court for the Eastern Division of the Northern District of Mississippi, being Exhibit "No. 14."

Certified copy of the proceedings in the matter of Knoop, Fabarius, et al., vs. Steele, Miller & Company, No. 123 in Bankruptcy, in the District Court of the United States for the Eastern Division of the Northern District of Mississippi, particularly the petition for adjudication in involuntary bankruptcy, the certificate of the clerk showing the date of the filing thereof and the orders of the Court in the premises. The appointment of J. A. E. Pyle as temporary receiver and the bond of J. A. E. Pyle as temporary receiver. The order of reference to John W. Davis, referee in bankruptcy, the adjudication in bankruptcy by the said John W. Davis. The certificate of the said John W. Davis, referee in bankruptcy,

90 showing the election of a trustee, the bond of said trustee, together with the certificate of the clerk of the District Court of the United States for the Northern District of Mississippi, showing that John W. Davis was at the time of the said proceedings the referee of said court in bankruptcy and is now the referee of the said court in bankruptcy; the same being Exhibit "No. 12" and Exhibit "13."

Exhibits 2 to 53, inclusive, attached to the deposition of Adolph Riss, the same being the drafts, through bills of lading, invoices, insurance certificates and custody bills of lading called for during the examination of Mr. Linde.

Exhibit 1 attached to the deposition of Franz Lysell, called for as above.

Exhibits 1 to 34, inclusive, attached to the deposition of Elisee Paul Dubois, called for as above.

Exhibits 9 to 13, inclusive, attached to the deposition of Emile Level, called for as above.

Exhibits 2 to 7, inclusive, attached to the deposition of Jules Castel, called for as above.

Admission concerning testimony of J. A. E. Pyle, trustee.

Stipulation of counsel entitled in all the above causes where-

by all exhibits annexed to the foregoing depositions except those included in the above offer have, by agreement, been withdrawn because in the opinion of counsel they were irrelevant, cumulative or duplicates.

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91 United States District Court, Eastern District of Louisiana, New Orleans Division.

J. A. E. Pyle, Trustee,
versus No. 14,241.
Texas Transport & Terminal Company, et als.

Note: Evidence offered and filed on behalf of complainant, and referred to in his note of evidence, copied into the transcript of appeal in the case of J. A. E. Pyle, Trustee, vs. Texas Transport & Terminal Company, et als., No. 14,240 of the docket of the United States District Court, Eastern District of Louisiana, New Orleans Division, in accordance with the praecipe for the transcript of appeal.

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92 NOTE OF EVIDENCE ON BEHALF OF THE COMPTOIR D'ESCOMPTE DE MULHOUSE.

Filed November 20th, 1911.

United States District Court, Eastern District of Louisiana, New Orleans Division.

J. A. E. Pyle, Trustee,
vs. No. 14,241.
Texas Transport and Terminal Company, et als.

Note of Evidence on Behalf of the Comptoir d'Escompte de Mulhouse.

The undersigned solicitors for the above named defendant offer, produce, read and file in evidence in this cause the following depositions, exhibits and stipulations:

1. Stipulation of counsel as to the use in causes Nos. 14,240, 14,241, 14,242, 14,243 and 14,247 of evidence taken and filed in any one of said causes.

2. The deposition of Ferdinand Scheuch, together with the following exhibits: Nos. 1, 2, 3, and 4, and 5, 12 and 13, as types of exhibits from 4 to 13. Nos. 14 and 18 as types of exhibits 14 to 18 and 18 bis. Exhibits 19 to 29 inclusive. Exhibits Nos. 30 and 46 as types of 30 to 46. Exhibits Nos. 47 and 90 as types of Exhibits 47 to 90. Exhibits 91 and 659 as types of exhibits from 91 to 659. Exhibits 660 to 671, inclusive.

3. Deposition of Albert Schilling.

4. Deposition of Adolph Riss, and the following exhibits annexed and referred to therein: Exhibits from 1 to 53 inclusive. Exhibits 59 and 60. Exhibits 122 to 125, inclusive.

5. The deposition of Franz Lysell, and the following exhibits annexed and referred to therein: Exhibits 1, 2, 3, 5, 6, 7, 13 and 14.

6. The deposition of Elisee Paul Dubois, and the following exhibits annexed and referred to therein: Exhibits 1 to 36, inclusive. Exhibits 58 to 62, inclusive.

7. The deposition of Emile Level and the following exhibits annexed and referred to therein: Exhibits
93 Nos. 3, 5, 6, and 9 to 13 inclusive.

8. The deposition of Jules Castel and the following exhibits annexed and referred to therein: Exhibits Nos. 2 to 7 inclusive. Exhibits Nos. 9 to 12, inclusive.

All of the above depositions having been taken under commission issued herein before John Preston Beecher, United States consul at Havre.

9. Stipulation of counsel entitled in all the above causes whereby all the exhibits annexed to the foregoing depositions except those included in the above offer have, by agreement,

been withdrawn because in the opinion of counsel they were irrelevant, cumulative or duplicates.

(Signed) DENEGRE & BLAIR,
Solicitors for Comptoir d'Escompte de Mulhouse.

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94 United States District Court, Eastern District of Louisiana, New Orleans Division.

J. A. E. Pyle, Trustee,
versus No. 14,241.
Texas Transport & Terminal Company, et als.

Note: Evidence offered and filed on behalf of the Comptoir d'Escompte de Mulhouse, and referred to in its note of evidence, copied into the transcript of appeal in the case of J. A. E. Pyle, Trustee, vs. Texas Transport & Terminal Company, et als., No. 14,240 of the Docket of the United States District Court, Eastern District of Louisiana, in accordance with the praecipe for the transcripts of appeal.

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95 RESUMED HEARING AND SUBMISSION.

Extract From the Minutes, November Term, 1911.

New Orleans, Tuesday, November 21st, 1911.
Court met pursuant to adjournment.
Present: Hon. Rufus E. Foster, Judge.

J. A. E. Pyle, Trustee,
vs. No. 14,241.
Texas Transport and Terminal Company, et als.

This cause, as continued from Monday, November 20th, for further hearing, was this day resumed.

Present: The solicitors for the respective parties; and was argued and submitted, when the Court took time to consider.

96 DECREE.

Filed January 1st, 1912.

United States District Court, Eastern District of Louisiana.
In Equity.

J. A. E. Pyle
vs. No. 14,241.
Comptoir d'Escompte de Mulhouse, Compagnie Generale Transatlantique, Texas Transport and Terminal Company, and Scheuch and Company.

Decree.

This cause came on to be heard at this term and was argued by counsel and taken under advisement by the Court, and upon consideration thereof, it is now ordered, adjudged and decreed as follows, viz.:

That complainants' bill be, and it is hereby, dismissed as to defendant Comptoir d'Escompte de Mulhouse at cost of complainant, to be taxed; that the injunction pendente lite heretofore issued in this cause be and the same is hereby dissolved, and that Comptoir d'Escompte de Mulhouse be and the same is hereby declared to be the owner of the cotton referred to in the bill of complaint and covered by the bond herein given; and that the demands of the complainant against the said Comptoir d'Escompte de Mulhouse be denied.

The Court hereby expressly reserves for further consideration all matters not herein expressly provided for, including the rights and claims of the Compagnie Generale Transatlantique against complainant and the rights and claims of all parties defendant, under the injunction bonds herein given, as well against the sureties on said bonds as against the complainant, and as to all such matters the bill is retained for further proceedings.

January 1st, 1912.

(Signed) RUFUS E. FOSTER, Judge.

97 PETITION AND ORDER FOR APPEAL.

Filed March 1st, 1912.

United States District Court, Eastern District of Louisiana.

J. A. E. Pyle, Trustee,
versus No. 14241.
Texas Transport & Terminal Company.

The petition of J. A. E. Pyle, trustee, complainant in the above numbered and entitled cause, with respect represents:

That complainant considers himself aggrieved by the decree made and entered in this cause on the 1st day of January, 1912, and,

That he desires and hereby appeals from said decree to the United States Circuit Court of Appeals for the Fifth Circuit, and presents herewith, and makes part of this petition as Exhibit "A" hereto, assignments of error in said decree.

Wherefore, the premises considered, petitioner prays that his appeal may be allowed to operate as a supersedeas upon the giving of a bond with surety in an amount to be fixed by the Court and conditioned according to law, and that a transcript of the whole record, proceedings, testimony and papers upon which said decree was made, duly authenticated, be sent to the United States Circuit Court of Appeals for the Fifth Circuit in the manner and form and at the time prescribed by law and by the practice of said Court; that citation issue to Comptoir d'Escompte de Mulhouse through its solicitors of record, Denegre and Blair; to Compagnie Generale Transatlantique through its agent, W. H. Hendren; to the Texas Transport & Terminal Company through its agent, W. H. Hendren, in the manner and form prescribed by law, for a correction of said errors and a reversal of said decree and for such other and further relief as may be proper in the premises.

(Signed) W. A. PERCY,
DUFOUR & DUFOUR,
Solicitors.

Service of above petition accepted 3/1/12.
(Signed) DENEGRE & BLAIR, Solrs.
(Signed) GEO. H. TERRIBERRY,
Sol. for Compagnie Generale Transatlantique and Texas Transport & Terminal Co.

98 ORDER.

Considering the foregoing petition, it is ordered that an appeal be allowed to the said complainant, returnable to the United States Circuit Court of Appeals for the Fifth Circuit, within thirty days from the date thereof, and that same operate as a supersedeas, upon the said complainant furnishing bond with a good and solvent surety, according to law, in the sum of two hundred dollars.

(Signed) RUFUS E. FOSTER, Judge.

Mar. 1/12.

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99 ASSIGNMENTS OF ERROR.

Filed March 1st, 1912.

United States District Court, Eastern District of Louisiana.

J. A. E. Pyle, Trustee,
versus No. 14241.
Texas Transport & Terminal Company, et als.

Assignments of Error.

Now comes J. A. E. Pyle, trustee in bankruptcy of Steele, Miller & Company, appellant, by his attorney, and says that in the record and proceedings aforesaid, of the United States District Court for the Eastern District of Louisiana, in the above entitled cause and in the decree therein rendered on the 1st day of January, 1912, manifest error hath intervened to the prejudice of said appellant, in this, to-wit:

(1) The Court erred in rendering and entering a decree dismissing the bill of complaint of J. A. E. Pyle, trustee in bankruptcy of Steele, Miller & Company.

(2) The Court erred in rendering and entering a decree in favor of the defendant.

(3) The Court erred in holding that the Bank of Mulhouse

was the owner of the cotton described in the bill of complaint and covered by the bond herein given.

(4) The Court erred in holding that, by delivering the actual cotton to the carriers, Steele, Miller & Company intended to appropriate, and did appropriate, said cotton to the fraudulent bills of lading theretofore acquired and held by the defendant, the Bank of Mulhouse.

(5) The Court erred in holding that the defendant bank was in fact a purchaser of actual cotton from Steele, Miller & Company.

(6) The Court erred in failing to find and hold that the defendant knew, or ought to have known, or had reasonable grounds to believe, that Steele, Miller & Company were insolvent at the time the defendant received the genuine bills of lading representing cotton actually shipped, re-
100 ferred to in the bill of complaint.

(7) The Court erred in failing to find and to hold that Steele, Miller & Company, by delivering the genuine bills of lading to the defendant representing cotton actually shipped, thereby intended to prefer and did prefer said defendant to and over its other creditors and thereby intended to grant, and did grant, an illegal and unfair preference to the defendants, and that the defendant did receive a preference within the meaning and intendment of the Bankrupt Statute of the United States.

Wherefore, the said J. A. E. Pyle, trustee in bankruptcy of Steele, Miller & Company, appellant, prays that for the errors aforesaid and other errors appearing in the record in the above entitled cause to the prejudice of appellant, the said decree be reversed and annulled and that appellant be granted such relief as may be proper, and appellant shall ever so pray.

(Signed) W. A. PERCY,
DUFOUR & DUFOUR,
Solicitors.

75

101 BOND.

Filed March 1st, 1912.

United States District Court, Eastern District of Louisiana.

J. A. E. Pyle, Trustee,
versus No. 14241
Texas Transport and Terminal Company, et als.

Know All Men By These Presents: That we J. A. E. Pyle, trustee in bankruptcy of Steele, Miller & Company, as principal, and Southwestern Surety Insurance Company, of Oklahoma, as sureties, are held and firmly bound unto the Texas Transport & Terminal Company; Compagnie Generale Transatlantique, Comptoir d'Escompte de Mulhouse, and each of them, in the full and just sum of two hundred dollars to be paid to the said Texas Transport & Terminal Company, Compagnie Generale Transatlantique, Comptoir d'Escompte de Mulhouse, certain attorney, executors, administrators or assigns, to which payment, well and truly to be made, we bind ourselves, our heirs, executors and administrators, jointly and severally, by these presents. Sealed with our seals and dated this 1st day of March, in the year of our Lord, one thousand nine hundred and twelve.

Whereas, lately at a session of the United States District Court, holding sessions in and for the Eastern District of Louisiana, in a suit depending in said Court, between J. A. E. Pyle, Trustee, and the Texas Transport & Terminal Company, et als., number 14241 of the docket of said Court, a decree was rendered against the said J. A. E. Pyle, trustee, and the said J. A. E. Pyle, trustee, having obtained an appeal and filed a copy thereof in the clerk's office of the said Court to reverse the decree in the aforesaid suit, and a citation directed to the said Texas Transport & Terminal Company, Compagnie Generale Transatlantique, Comptoir d'Escompte de Mulhouse, citing and admonishing them to be and appear before the United States Circuit Court of Appeals for the Fifth Circuit, to be holden at New Orleans, Louisiana, within 30 days from the date thereof.

Now, the condition of the above obligation is such, That if the said J. A. E. Pyle, trustee, shall prosecute said appeal to

effect, and answer all damages and cost if he fails
102 to make his plea good, then the above obligations to be void; else to remain in full force and virtue.

(Signed) J. A. E. PYLE, Trustee.
By WM. C. DUFOUR,
His Solicitor & Attorney. [Seal]

(Signed) SOUTHWESTERN SURETY INS. CO. OF OKLA.
By J. H. BODENHEIMER,
Agent & Atty. in Fact. [Seal]

Approved by:
(Signed) RUFUS E. FOSTER, Judge.

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103 United States of America,

District Court of the United States, Eastern District of Louisiana.

Clerk's Office:

I, HENRY J. CARTER, Clerk of the District Court of the United States for the Eastern District of Louisiana, do hereby certify that the foregoing 102 pages contain and form a full, complete, true and perfect transcript of the Record, Assignment of Errors, and Proceedings in the case of J. A. E. Pyle, Trustee, vs. Texas Transport & Terminal Company, et als., No. 14,241 of the docket of the said Court (made in accordance with the Pracipe for the Transcript of Appeal, copied at page 1333 of the Transcript of Appeal in the case entitled as above and numbered 14,240 of the docket of said Court).

Witness my hand and the seal of said Court, at the City of New Orleans, Louisiana, this 10th day of July, A. D. 1912.

[Seal] H. J. CARTER, Clerk.

That thereafter, the following proceedings were had in said cause in the United States Circuit Court of Appeals for the Fifth Circuit, viz:

Argument and Submission.

Extract from the Minutes of March 20, 1913.

No. 2390.

J. A. E. PYLE, Trustee in Bankruptcy of Steele, Miller & Company,
versus
TEXAS TRANSPORT AND TERMINAL COMPANY, COMPAGNIE GENERALE TRANSATLANTIQUE, and COMPTOIR D'ESCOMPTE DE MULHOUSE.

On this day this cause was called, and after argument by William C. Dufour, Esq., for Appellant, and J. P. Blair, Esq., for Appellees, was submitted to the Court.

Opinion of the Court.

Filed April 8th, 1913.

United States Circuit Court of Appeals, Fifth Circuit.

No. 2389.

J. A. E. PYLE, Trustee, etc.,
v.
TEXAS TRANSPORT & TERMINAL CO. et al., and BANK DE MULHOUSE.

No. 2390.

J. A. E. PYLE, Trustee, etc.,
v.
TEXAS TRANSPORT & TERMINAL CO. et al., and COMPTOIR D'ESCOMPTE DE MULHOUSE.

No. 2391.

J. A. E. PYLE, Trustee, etc.,
v.
TEXAS TRANSPORT & TERMINAL CO. et al., and PAUL CHARDIN.

No. 2392.

J. A. E. PYLE, Trustee, etc.,
v.
TEXAS TRANSPORT & TERMINAL CO. et al., and SOCIETÉ GENERALE.

No. 2393.

J. A. E. PYLE, Trustee, etc.,
v.
TEXAS TRANSPORT & TERMINAL CO. et al., and CREDIT HAVRAIS.

Appeals from the District Court of the United States, Eastern District of Louisiana.

Before Pardee and Shelby, Circuit Judges, and Sheppard, District Judge.

By the COURT:

The appeals in the above numbered and entitled cases are affirmed on the authority of Lovell v. Newman & Son, 192 F. 753, and Hentz & Co., v. Lovell, Id. 762.

Judgment.

Extract from the Minutes of April 8th, 1913.

No. 2390.

J. A. E. PYLE, Trustee in Bankruptcy of Steele, Miller & Company,
versus
TEXAS TRANSPORT & TERMINAL COMPANY, COMPAGNIE GENERALE TRANSATLANTIQUE, and COMPTOIR D'ESCOMPTE DE MULHOUSE.

This cause came on to be heard on the transcript of the record from the District Court of the United States for the Eastern District of Louisiana, and was argued by counsel;

On consideration whereof, it is now here ordered, adjudged and decreed by this Court, that the decree of the said District Court, in this cause, be and the same is hereby affirmed;

It is further ordered, adjudged and decreed that the Appellant, J. A. E. Pyle, Trustee in Bankruptcy of Steele, Miller & Company, and the surety on the appeal bond herein, Southwestern Surety Insurance Company of Oklahoma, be condemned, in solid to pay the costs of this cause in this Court, for which execution may be issued out of said District Court.

Petition for Rehearing.

Filed May 5th, 1913.

United States Circuit Court of Appeals, Fifth Circuit.

No. 2390.

J. A. E. PYLE, Trustee,
versus
TEXAS TRANSPORT & TERMINAL COMPANY et als.

Application for Rehearing.

The petition of J. A. E. Pyle, trustee, appellant in the above entitled cause, represents:

That there is error to petitioner's prejudice in the decree rendered by this Honorable Court in this cause affirming the decree from

which petitioner's appeal was prosecuted and for specification of error, petitioner says:

That the decree is based upon the authority of the cases of Lovell, Trustee, v. Isidore Newman, and Hentz v. Lovell, reported in 193 F., p. 753.

It is respectfully submitted that the issue involved in the present suit is separate and distinct from the issues involved and presented in the case under authority of which the Court has affirmed this decree, in that the cases cited invoked solely the issue of appropriation of property, while in the instant case, the Court had before it a direct charge of giving and receiving an unfair preference within the intendment of the Bankruptcy Statute, which issue was neither presented nor decided in the Lovell or Hentz cases; that, therefore, the authority cited cannot be held to control the present case.

Wherefore, petitioner prays that a rehearing may be granted in this cause, and that upon such heraing, the judgment appealed from be reversed and that judgment be rendered in favor of petitioner, granting the relief prayed for.

(Signed) WM. C. DUFOUR,
(Signed) H. GENERES DUFOUR,
Solicitors for Appellant.

The undersigned hereby certifies that he is one of the solicitors for J. A. E. Pyle, trustee, appellant in the above entitled and numbered cause, and that in his opinion the foregoing petition for rehearing is well founded in law.

(Signed) WM. C. DUFOUR.

Order Denying Rehearing.

Extract from the Minutes of June 2nd, 1913.

No. 2390.

J. A. E. PYLE, Trustee in Bankruptcy of Steele, Miller & Company,
versus
TEXAS TRANSPORT & TERMINAL COMPANY, COMPAGNIE GENERALE TRANSATLANTIQUE, and COMPTOIR D'ESCOMPTE DE MULHOUSE.

Ordered that the petition for rehearing, filed in this cause, be, and the same is hereby denied.

Petition for Appeal, and Order.

Filed July 3d, 1913.

United States Circuit Court of Appeals, Fifth Circuit.

No. 2390.

J. A. E. PYLE, Trustee,
versus
THE TEXAS TRANSPORT & TERMINAL COMPANY et als.

The petition of J. A. E. Pyle, Trustee of Steele, Miller & Company Bankrupts, with respect shows:

That the above entitled cause is now pending in the United States Circuit Court of Appeals for the Fifth Circuit and that a decree has been herein rendered on the 8th day of April, 1913, affirming the judgment of the District Court of the United States for the Eastern District of Louisiana; that the matter in controversy in said suit exceeds Three Thousand Dollars, ($3,000), besides interest and costs, and that the jurisdiction of none of the said Courts is, or was invoked, nor is or was dependent, upon the opposite parties to the suit or controversy being aliens and citizens of the United States or citizens of different states; and that this cause does not arise under the patent laws nor the copyright laws, nor the revenue laws, nor the criminal laws of the United States and that it is not an admiralty case and that it is a proper cause to be reviewed by the Supreme Court of the United States upon appeal.

Therefore, your petitioner respectfully prays that an appeal with supersedeas be allowed in the above cause, and that the Clerk of the United States Circuit Court of Appeals for the Fifth Circuit be directed to send the record and proceedings in said cause, with all things concerning same, to the Supreme Court of the United States in order that the errors complained of in the assignment of error herein filed by said appellant may be reviewed and if error be found corrected according to the laws and customs of the United States.

(Signed) WM. C. DUFOUR,
(Signed) H. GENERES DUFOUR,
Solicitors.

Order.

The foregoing petition is granted and the appeal allowed as prayed for upon appellant giving bond according to law in the sum of $250.00.

July 2d, 1913.

(Signed) DON A. PARDEE, *Judge.*

Assignment of Errors.

Filed July 3d, 1913.

United States Circuit Court of Appeals, Fifth Circuit.

J. A. E. PYLE, Trustee,
versus
TEXAS TRANSPORT & TERMINAL COMPANY et als.

And now comes J. A. E. Pyle, Trustee in Bankruptcy of Steele, Miller & Company, Bankrupts, appellant, through William J. Lamb, William C. Dufour, and H. Generes Dufour, his solicitors, and says that in the record and proceedings aforesaid in the United States Circuit Court of Appeals for the Fifth Circuit in the above entitled cause and in the rendition of the final decree therein manifest, error has intervened to the prejudice of said appellant in this, to-wit:

(1) The United States Circuit Court of Appeals for the Fifth Circuit erred in affirming the decree of the United States District Court for the Eastern District of Louisiana.

(2) The said United States Circuit Court of Appeals for the Fifth Circuit erred in not reversing the said decree of the United States District Court for the Eastern District of Louisiana.

(3) The said United States Court of Appeals for the Fifth Circuit erred in failing to sustain appellant's Assignment of Error No. 4 upon the record of said case as follows:

"That the Court erred in holding by delivering the actual cotton to the carriers, Steele, Miller & Company intended to appropriate and did appropriate said cotton to the fraudulent bills of lading acquired and held by defendant."

(4) The said United States Circuit Court of Appeals for the Fifth Circuit erred in failing to sustain appellant's Assignment of Error No. 5 upon the record of said case as follows:

"The Court erred in holding that the defendant bank was in fact a purchaser of actual cotton from Steele, Miller & Company."

(5) The said United States Circuit Court of Appeals for the Fifth Circuit erred in failing to sustain appellant's Assignment of Error No. 6 upon the record of said case as follows:

"The Court erred in failing to find and hold that the defendant knew or ought to have known or had reasonable grounds to believe that Steele, Miller & Company were insolvent at the time the defendant received the genuine bills of lading representing cotton actually shipped referred to in the bill of complaint."

(6) The said United States Circuit Court of Appeals for the Fifth Circuit erred in failing to sustain appellant's Assignment of Error No. 7 upon the record of said case as follows:

"The Court erred in failing to find and to hold that Steele, Miller & Company by delivering the genuine bills of lading to the defendant representing cotton actually shipped, thereby intended to prefer

and did prefer said defendant to and over its other creditors, and thereby intended to grant and did grant an illegal and unfair preference to the defendant, and that the defendant did receive a preference within the meaning and intendment of the bankrupt statute of the United States."

Wherefore, said J. A. E. Pyle, Trustee as aforesaid, prays that for the errors aforesaid and other errors appearing in the record of said United States Circuit Court of Appeals for the Fifth Circuit in the above entitled cause to the prejudice of the appellant, said decree of the United States Circuit Court of Appeals for the Fifth Circuit be reversed and annulled and that said cause be remanded to the United States District Court for the Eastern District of Louisiana, with instructions to set aside the decree heretofore rendered in the trial of this cause and commanding a new trial for same and such other proceedings in said cause as may be determined upon by this Honorable Court to the end that justice may be obtained in the premises.

(Signed) WM. C. DUFOUR,
(Signed) H. GENERES DUFOUR,
Solicitors.

Bond on Appeal.

Filed July 7th, 1913.

J. A. E. PYLE, Trustee in Bankruptcy of Steele, Miller & Company,
vs.
TEXAS TRANSPORT AND TERMINAL COMPANY, COMPAGNIE GENERALE TRANSATLANTIQUE, and COMPTOIR D'ESCOMPTE DE MULHOUSE.

Know all men by these presents, that we, J. A. E. Pyle, Trustee in Bankruptcy of Steele, Miller & Company, as Principal, and Southwestern Surety Insurance Company, as Surety, are held and firmly bound unto The Texas Transport and Terminal Company, Compagnie Generale Transatlantique, and Comptoir D'Escompte De Mulhouse in the sum of Two Hundred and Fifty Dollars ($250.00), to be paid to the said, the Texas Transport and Terminal Company, Compagnie Generale Transatlantique and Comptoir D'Escompte De Mulhouse; we bind ourselves and each of our heirs, executors and administrators, jointly and severally, firmly by these presents.

Sealed with our seals and dated the 3d day of July, A. D. 1913.

Whereas, the appellant in the above entitled suit has prosecuted an appeal to the Supreme Court of the United States to reverse the decree rendered and entered in said cause in the Circuit Court of Appeals for the Fifth Circuit on the 8th day of April 1913.

Now, therefore, the condition of this obligation is such that if the said appellant shall prosecute said appeal to effect and answer all damages and costs if he fails to make said appeal good, then this

obligation shall be void; otherwise to remain in full force and virtue.

(Signed) J. A. E. PYLE, *Trustee,*
By WM. C. DUFOUR, *Solicitor.*
(Signed) SOUTHWESTERN SURETY INSURANCE CO. OF OKLAHOMA, [SEAL.]
By J. H. BODENHEIMER,
Agent & Attorney-in-Fact.

The foregoing bond is approved this 4th day of July, A. D. 1913.
(Signed) DON A. PARDEE,
United States Circuit Judge, Fifth Circuit.

Clerk's Certificate.

UNITED STATES OF AMERICA:

United States Circuit Court of Appeals, Fifth Circuit.

I, Frank H. Mortimer, Clerk of the United States Circuit Court of Appeals for the Fifth Circuit, do hereby certify that the pages numbered from 78 to 93 next preceding this certificate contain full, true and complete copies of all the pleadings, record entries and proceedings, including the opinion of the United States Circuit Court of Appeals for the Fifth Circuit, in a certain cause in said Court, numbered 2390, wherein J. A. E. Pyle, Trustee in Bankruptcy of Steele, Miller & Company, is appellant, and The Texas Transport & Terminal Company, Compagnie Generale Transatlantique, and Comptoir d'Escompte de Mulhouse are appellees, as full, true and complete as the originals of the same now remain in my office.

I further certify that the pages of the printed record numbered from 1 to 77 are identical with the printed record upon which said cause was heard and decided in the said Circuit Court of Appeals.

In testimony whereof I hereunto subscribe my name and affix the seal of the said Circuit Court of Appeals, at my office in the City of New Orleans, Louisiana, in the Fifth Circuit, this 10th day of July, A. D. 1913.

[Seal United States Circuit Court of Appeals, Fifth Circuit.]

FRANK H. MORTIMER,
Clerk of the United States Circuit Court of Appeals.

THE UNITED STATES OF AMERICA:

The President of the United States to The Texas Transport and Terminal Company, Compagnie Generale Transatlantique, and Comptoir D'Escompte de Mulhouse, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States at Washington, D. C., within thirty (30) days from the date hereof, pursuant to a petition and

order of appeal sued out and filed in the Clerk's Office of the United States Circuit Court of Appeals for the Fifth Circuit, in the cause wherein J. A. E. Pyle, Trustee in Bankruptcy of Steele, Miller & Company, is Appellant and The Texas Transport and Terminal Company, Compagnie Generale Transatlantique and Comptoir D'Escompte de Mulhouse are Appellees to show cause, if any there be, why the decree rendered against the said J. A. E. Pyle, Trustee in Bankruptcy of Steele, Miller & Company and in said petition and order of appeal mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness, the Honorable Edward Douglass White, Chief Justice of the United States, this 4th day of July, in the year of our Lord one thousand nine hundred and thirteen.

New Orleans, July 9th, 1913.

DON A. PARDEE,
United States Circuit Judge.

Service accepted.

DENEGRE & BLAIR,
Sol'rs for Comptoir D'Escompte de Mulhouse;
GEO. H. TERRIBERRY,
Solicitor for Texas Tr. & Term. Co. &
Compagnie Generale Transatlantique.

[Endorsed:] No. 2390. United States Circuit Court of Appeals, Fifth Circuit. J. A. E. Pyle, Trustee in Bankruptcy of Steele, Miller & Co., Appellant, vs. Texas Transport & Terminal Co., Compagnie Generale Transatlantique, and Comptoir D'Escompte De Mulhouse, Appellees. Citation. U. S. Circuit Court of Appeals. Filed Jul 10, 1913. Frank H. Mortimer, Clerk.

Endorsed on cover: File No. 23,808. U. S. Circuit Court Appeals, 5th Circuit. Term No. 227. J. A. E. Pyle, trustee in bankruptcy of Steele, Miller & Company, appellant, vs. The Texas Transport & Terminal Company, Compagnie Generale Transatlantique, and Comptoir d'Escompte de Mulhouse. Filed August 1st, 1913. File No. 23,808.

Office Supreme Court, U. S.
FILED
MAR 15 1915
JAMES D. MAHER
CLERK

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1914.

No. 227.

J. A. E. PYLE, Trustee in Bankruptcy of STEELE, MILLER & COMPANY, Appellant,

vs.

THE TEXAS TRANSPORT & TERMINAL COMPANY, COMPAGNIE GENERALE TRANSATLANTIQUE, and COMPTOIR D'ESCOMPTE DE MULHOUSE.

Memorandum Brief for Appellees.

The above-entitled appeal and appeals numbers 226, 228, 229 and 230 were tried, argued and decided together, both in the District Court and in the Court of Appeals. They present the same general questions of law and of fact. The evidence is the same in each case; that is to say, the evidence taken in one case was by stipulation deemed to be taken in all the other cases, and has been included in only one of the transcripts of record, that of Cause No. 226. The cases illustrate and explain each other, so that they may be more conveniently discussed and more readily understood when presented and considered together. We have, therefore, covered all the cases in one brief and argument, filed in No. 226. To that brief we now beg leave to refer the Court, and for the reasons therein stated, we ask that the judgment appealed from be affirmed.

Respectfully submitted,

GEORGE DENÈGRE,
JOSEPH PAXTON BLAIR,
VICTOR LEOVY,
Of Counsel for Appellees.

FILED
APR 3 1915
JAMES D. MAHER
CLERK

Supreme Court of the United States

October Term, 1914.

No. 227.

J. A. E. PYLE, TRUSTEE IN BANKRUPTCY OF STEELE, MILLER & COMPANY, Appellant,

versus

THE TEXAS TRANSPORT & TERMINAL COMPANY, COMPAGNIE GENERALE TRANSATLANTIQUE AND COMPTOIR D'ESCOMPTE DE MULHOUSE.

MEMORANDUM BRIEF FOR APPELLANTS.

As stated in the memorandum filed by the appellee, the above entitled appeal and appeals numbers 226, 228, 229 and 230 were tried, argued and decided together, both in the District Court and in the Circuit Court of Appeals. We also have covered all of the cases in one brief, filed in Number 226.

We ask for the same relief as has been asked for in that case and for the reasons stated in that brief.

Respectfully submitted,

W. J. LAMB,

WM. C. DUFOUR,

H. GENERES DUFOUR,

GEORGE JANVIER,

Of Counsel for Appellants.

(23,809)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1914.

No. 228.

J. A. E. PYLE, TRUSTEE IN BANKRUPTCY OF STEELE, MILLER & COMPANY, APPELLANT,

vs.

THE TEXAS TRANSPORT & TERMINAL COMPANY, COMPAGNIE GENERALE TRANSATLANTIQUE, AND PAUL CHARDIN.

APPEAL FROM THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIFTH CIRCUIT.

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JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., SEPTEMBER 17, 1914.

UNITED STATES OF AMERICA.

UNITED STATES DISTRICT COURT, EASTERN DISTRICT OF LOUISIANA, NEW ORLEANS DIVISION.

J. A. E. PYLE, TRUSTEE,

Appellant.

versus No. 14,242

TEXAS TRANSPORT & TERMINAL COMPANY, ET ALS.,

Apellants.

Messrs. W. A. Percy, J. A. Lamb, and Dufour & Dufour, for J. A. E. Pyle, Trustee, Appellant.

Mr. George H. Terriberry, for the Texas Transport & Terminal Company and Compagnie General Transatlantique, Appellees.

Messrs. Denegre & Blair, for Paul Chardin, Appellee.

APPEAL FROM THE United States District Court for the Eastern District of Louisiana, New Orleans Division, to the United States Circuit Court of Appeals for the Fifth Circuit, Returnable Within Thirty (30) Days from the First (1st) Day of March, A. D. 1912, at the City of New Orleans, State of Louisiana.

Extension of Thirty (30) Days' Time from the Return of the Appeal, To-wit, from March 31st, 1912, Granted by the

Honorable United States Circuit Court of Appeals for the Fifth Circuit.

Extension of Thirty (30) Days' Time from the Return of the Appeal, To-wit, from April 30th, 1912, Granted by the Honorable United States Circuit Court of Appeals for the Fifth Circuit.

Time for Filing the Transcript of Appeal in the Honorable United States Circuit Court of Appeals for the Fifth Circuit, Extended to the Tenth (10th) Day of July, A. D. 1912, as Per Agreements of Counsel, Copied at Pages 1332 and 1336, Respectively, of the Transcript of Appeal in the Case Bearing the Above Title, and Numbered 14,240 of the Docket of the Said United States District Court.

TRANSCRIPT OF APPEAL.

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2 BILL OF COMPLAINT.

Filed August 18, 1910.

United States District Court, Eastern District of Louisiana.

J. A. E. PYLE, TRUSTEE,

versus No. 14242

TEXAS TRANSPORT & TERMINAL CO., ET ALS.

To the Honorable the Judge of the United States District Court, Eastern District of Louisiana:

J. A. E. Pyle, a citizen of the State of Mississippi, suing herein as trustee in bankruptcy of Steele, Miller & Company, brings this his bill of complaint against the Compagnie Generale Transatlantique, a corporation created under the laws of the Republic of France, with its domicile in the City of

Paris, France; the Texas Transport & Terminal Company, a corporation created under the laws of the State of New Jersey, but doing business in the City of New Orleans, through W. H. Hendren, agent; F. Scheuch & Company, a commercial firm composed of Ferd Scheuch and Albert Schilling, of Havre, France, and Paul Chardin, a citizen and resident of Havre, France, and the other persons against whom process is herein prayed; and thereupon your orator complains and says:

First. That Steele, Miller & Company, a partnership composed of L. C. Steele, J. H. Miller and C. H. G. Linde, was lately doing business in and had its principal place of business at Corinth, in the State of Mississippi, and within the Northern District of Mississippi; that the business of said firm of Steele, Miller & Company consisted of the purchasing and selling of cotton.

Second. That on May 4th, 1910, in the suit No. 123, entitled Knoop Fabarius & Company, et al., vs. Steele, Miller & Company, in the United States District Court for the Northern District of Mississippi, application was made for an adjudication in involuntary bankruptcy against said firm and for the appointment of a temporary receiver, to take charge of the assets of said firm pending the action of the
3 court and pending the election of a trustee; that your orator, J. A. E. Pyle, was appointed by the Honorable Judge of the United States District Court for the Northern District of Mississippi, as temporary receiver in accordance with the prayer of said petition, and that your orator duly qualified as such, all of which will appear more fully from the petition and order filed in said cause and the oath and bond filed by your orator as temporary receiver in the said numbered and entitled cause, all of which are made part hereof as though fully and at length set forth herein, and will be produced at the trial of this cause.

Third. That on the 31st day of May, 1910, in the trial of said cause held in the manner and form prescribed by law, the said firm of Steele, Miller & Company was adjudicated a bankrupt, and on the 11th day of July, 1910, at the meeting of the creditors held pursuant to law, your orator was elected

trustee of the said firm of Steele, Miller & Company, all of which will appear more fully from the decree of adjudication in bankruptcy of the United States District Court for the Northern District of Mississippi rendered on the 31st day of May, 1910, in said cause, entitled Knoop, Fabarius & Co. et al. vs. Steele, Miller & Company, No. 123 of the docket of the United States District Court for the Northern District of Mississippi, in bankruptcy, and by reference to the proceedings before the referee in bankruptcy and the order approving the bond of your orator as trustee, which said proceedings are also made part hereof as though fully and at length set forth herein and which will be produced at the trial of the cause.

4 Fourth. Your orator shows that on or prior to the 15th day of April, 1910, Steele, Miller & Company were indebted to Paul Chardin in the sum of $72,557.12, and that said indebtedness arose out of the following transactions:

That said Steele, Miller & Company at a date to your orator unknown had adopted a fraudulent scheme of obtaining money, and in furtherance of which the said bankrupt firm did draw drafts for large sums of money and did attach to such drafts what purported to be through bills of lading of carriers for lots of cotton specifically described in such bills of lading, and thereupon the said Steele, Miller & Company received the money called for by such drafts either by their sale or their acceptance and payment by the drawees; that the said bills of lading resembled in form and appearance the bills of lading issued by carriers at places from which Steele, Miller & Company, from time to time, shipped cotton over the lines of such carriers, but the bills of lading attached to such drafts did not represent cotton actually received and shipped by the carriers who, it was purported, issued them, but were spurious and forged bills of lading and in no sense represented cotton then in the possession of Steele, Miller & Company, or delivered to the carriers for transportation. Your orator further avers that the sale, negotiation and acceptance of drafts with actual bills of lading for the cotton thereto attached, under the custom which involves the delivery of such bills of lading upon the payment of the drafts, was and is the usual and customary method by which sales of cotton

were and are accomplished by persons engaged in
5 such trade, and the purchases of cotton were and are
accomplished by the purchase or acceptance and payment of such drafts with bills of lading thereto attached; that, under the custom and practice of the cotton trade, such drafts were and are purchased or paid wholly on the security of the bills of lading thereto attached, and for the purpose of obtaining the cotton therein mentioned, and the purchase or acceptance and payment of the said drafts with the said bills of lading attached constituted the entire transaction between the parties, the bills of lading supposedly representing cotton which has passed into the carriers for delivery subject to the presentation of the bill of lading, and the payment and acceptance of the draft and the acquisition of the said bill of lading passing the muniment of title to the party who had paid or accepted the said draft.

Fifth. Your orator avers that on or about the 27th day of January and within ninety days thereafter, Paul Chardin had become the acceptor of drafts drawn by Steele, Miller & Company in the sum of, to-wit, 378,022.60 francs, or $72,557.12, to which drafts were attached papers purporting to be bills of lading of carriers for 1,000 bales of cotton, and your orator annexes hereto as Exhibit "A" a statement showing the dates of such drafts, the name of the drawee, viz., Paul Chardin, the time when the drafts were payable, the marks of the cotton and the number of the bales thereof for which papers purporting to be bills of lading were attached to such drafts, and the amounts of such drafts in francs, in which form of currency the drafts were drawn, and your orator now avers as a matter
of fact that the papers attached to the said drafts
6 were not bills of lading for which any cotton had
been received or shipped by the carriers which it was purported had issued such bills of lading as recited therein, and such papers purporting to be the bills of lading were therefore wholly spurious and of no force and effect as representing the cotton called for by them. The drafts aforesaid, and appearing in the said Exhibit "A," attached hereto, were accepted and paid for by or for Paul Chardin for the purpose of obtaining and thus buying the bills of lading thereto attached, and the cotton called for by such ladings, and by such acceptances and payment, your orator is advised

and charges that Paul Chardin became and was a creditor of said Steele, Miller & Company in the sum of money hereinbefore stated.

Sixth. Your orator avers that the firm of Scheuch & Company, herein made a defendant, was at the time of the transactions herein recited, a commercial firm engaged in buying and selling cotton in Havre, France; that the said firm would and did purchase from Steele, Miller & Company certain cotton, and, in accordance with the customs of the trade, did open banker's credit against which Steele, Miller & Company would draw its drafts to which were attached the bills of lading, presumably bearing the marks of the cotton shipped, and to which were further attached what is known in the trade as "all necessary documents;" that in the transactions herein complained of, the cotton referred to in the bills of lading and in the drafts hereinbefore described, was sold to Scheuch Company, drafts to be made upon Paul Chardin, papers attached to said drafts to the order of Steele, Miller & Company, notify Scheuch & Company.

7 Your orator further avers that for a long time previous to the 1st day of April, 1910, and at all times since that date, Steele, Miller & Company were wholly insolvent; that they had issued and negotiated drafts with spurious bills of lading attached in the manner hereinabove described, which had been purchased and paid for by persons in various parts of the world in an amount of money approximating three million dollars ($3,000,000) or more.

Seventh. Your orator shows that on or about the 6th of April, 1910, the said Steele, Miller & Company had in its possession or under its control at Memphis, 1,000 bales of cotton marked as follows:

R. I. N. O.	R. N. O. I.
R. N. A. M.	R. M. N. I.
R. T. H. F.	R. S. O. N.
R. M. B. E.	R. D. G. B.
R. T. P. N.	R. B. X. K.

and that said cotton on or about said date was shipped by said Steele, Miller & Company to the City of New Orleans, way-

bills or bills of lading being issued in favor of J. D. Hardin & Company, of this city, and your orator annexes hereto as Exhibit "B" a statement showing the marks of said cotton, the number of bales of each mark, the date of delivery and issuance of the bills of lading or way-bills by the carrier, and the destination of said cotton. Your orator avers that the said cotton reached the City of New Orleans on or about the 15th day of April, 1910, and that thereupon the said cotton was claimed by J. D. Hardin or J. D. Hardin & Company,
8 acting as agents of Steele, Miller & Company, and said cotton was delivered, subject to a shortage of six bales, marked R. T. P. N. and R. N. O. I., to the Compagnie Generale Transatlantique through its agent, the Texas Transport & Terminal Company, and port bills of lading issued therefor, which said bills of lading were returned by the said Hardin to Steele, Miller & Company at Corinth, Mississippi, or delivered in person to a member of said firm or an agent of said firm. Your orator annexes hereto as Exhibit "C" a statement showing the date that said cotton was delivered to the Texas Transport & Terminal Company as agents of the Compagnie Generale Transatlantique, the number and date of the bill of lading, the marks and number of bales of each mark of the said cotton so delivered.

Eighth. Your orator avers that about April 15, 1910, as herein stated above, Paul Chardin and Scheuch & Company, or both of them, were ordinary unsecured creditors of Steele, Miller & Company in the sum of $72,557.12, represented by the drafts herein described and to which were attached the spurious and forged bills of lading; that on or about said date the said Steele, Miller & Company, being then insolvent, with intent to prefer said Paul Chardin or Scheuch & Company, or both of them, over their other creditors, did deposit in the United States mail the said port bills of lading, the said bills of lading being addressed to Scheuch & Company, and the same having been indorsed by Steele, Miller & Company, the object and purpose of forwarding said port bills of lading being to substitute the same for the forged and worthless bill or bills of lading attached to the drafts held by the said
Paul Chardin or Scheuch & Company, or both of
9 them, and that said port bills of lading in due course were received by Scheuch & Company and delivered

to Paul Chardin, and your orator is advised that Paul Chardin thereupon surrendered his spurious and forged bills of lading to Scheuch & Company, who is now holding them, or by arrangement between said Scheuch & Company and the said Paul Chardin, said spurious bills of lading are being held by the said Paul Chardin for account of said parties. Your orator avers that the transmission of said port bills of lading to be substituted for the said fraudulent bills of lading was done with the intent to prefer the said Paul Chardin, and that when the said bills of lading were mailed to the said Scheuch & Company for delivery to Paul Chardin, and were received by the said Scheuch & Company and delivered to Paul Chardin, the said Scheuch & Company and the said Paul Chardin, in accepting the said bills of lading and permitting the substitution of the said valid and port or custody bills of lading for the worthless bills of lading then held, knew or should have known and had reasonable cause to believe that a preference was thereby given and intended, and knew or should have known that Steele, Miller & Company was at said time insolvent and that the effect of the mailing, the receipt and acceptance and substitution of said bills of lading was to enable the said Scheuch & Company or the said Paul Chardin to obtain payment of its said draft, and your orator now charges that the effect of the act hereinabove described, if maintained and permitted by this Honorable Court, will be to enable the said Paul Chardin or Scheuch & Company, or both of them, to obtain a greater per cent. of their said debt than any other creditor of said bankrupt, and that such acts should be set aside. Your orator charges that the acts hereinabove complained of were performed within four months prior to the filing of the petition of involuntary bankruptcy herein, and your orator is advised that the act or acts complained of are voidable at his election, and he does now elect to avoid the same and files this his bill to avoid said transfer.

Your orator avers that at the time of the institution of the proceedings in bankruptcy and for a year previous to that time, the said firm of Steele, Miller & Company and the individual members of said firm, were insolvent within the meaning and intent of the Bankrupt Laws of the United States. and that said Steele, Miller & Company and the individual members of said firm are so insolvent and that they have not

surrendered assets of sufficient value to pay the creditors of said estate, and that the amount surrendered by said bankrupts, including any amount that might be recovered by litigation, and the estates of the individual members when added to the firm assets, will not be sufficient to discharge the debts and obligations of said Steele, Miller & Company, but will only pay a small proportion of said obligations.

Ninth. Your orator avers that, at the time of the filing of the petition in involuntary bankruptcy herein referred to, 2,494 bales of said cotton were about to be shipped on the steamship "Texas" to Havre, France, and that the said 2,494 bales of cotton were actually loaded upon the said steamship; that 500 bales of said cotton were in the custody of the New Orleans Terminal Company at Port Chalmette; that, to-wit, on the 7th day of May, 1910, your orator as receiver
11 in bankruptcy of said estate filed his petition for injunction against the removal of said cotton in the United States District Court for the Eastern District of Louisiana, and thereupon the Honorable District Court granted a restraining order, and subsequently on the 9th day of May, 1910, said Court issued an injunction pendente lite, enjoining, restraining and prohibiting the Master, owner and agent of the steamship "Texas" from removing from the jurisdiction of this Court the cotton referred to in said proceedings, and on the — day of ————, 1910, issued its injunction against the New Orleans Terminal Company to the same effect, all of which will appear more fully by the record of said proceedings, entitled J. A. E. Pyle, Receiver, vs. Philip Landgren, Master S. S. Texas, et al., No. 14,219, of the docket of the United States District Court for the Eastern District of Louisiana, which said record is made part hereof as though fully and at length set forth herein. Your orator avers that upon the issuance of said injunction, the Texas Transport & Terminal Company, the agent of the Compagnie Generale Transatlantique, the owner of said steamship "Texas," acting by and with the consent of the master and owner of said vessel, caused the cotton, the removal of which had been enjoined, to be discharged from said ship and stored in the Kentucky Press in this city, to remain there until the further orders of said Court, all in accordance with the decree rendered in the above numbered and entitled cause, and your

orator avers that the said cotton is now in the said Kentucky Press awaiting the determination of this suit. Your orator avers that the cotton hereinabove described was and
12 is part of and included in the cotton in the custody of the Texas Transport & Terminal Company, agent of the Compagnie Generale Transatlantique, owner of the steamship "Texas" and now stored in the Kentucky Press, awaiting the determination of this suit. Your orator attaches hereto a list as Exhibit "D," a table showing the marks of the cotton, the removal of which was enjoined in said proceedings.

Tenth. Your orator further avers that the Texas Transport & Terminal Company, W. H. Hendren, its agent, and the Compagnie Generale Transatlantique decline to deliver said cotton or any part thereof to complainant or to any other person until it has been adjudged who is the owner of this cotton and to whom the possession thereof should be delivered by it.

Eleventh. Your orator avers that, although the Texas Transport & Terminal Company holds itself out as the duly accredited agent of the Compagnie Generale Transatlantique and does and performs acts for and in behalf of said Compagnie Generale Transatlantique, your orator is informed that said Compagnie Generale Transatlantique, has never designated the said Texas Transport & Terminal Company as its agent for the service of process in this State as required by the laws of this State, and that process should issue herein against the said Compagnie Generale Transatlantique through John T. Michel, Secretary of State of the State of Louisiana, in accordance with the laws of Louisiana upon the subject-matter.

Twelfth. Your orator further shows that Scheuch & Company and the individual members of said firm and Paul Chardin are not residents of the Eastern District of Lou-
13 isiana, but are aliens. That neither said Scheuch & Company, nor the individual members of said firm, nor Paul Chardin, are at present within the Eastern District of Louisiana, or in the United States, and neither the said Scheuch & Company, nor the individual members of said

firm, nor Paul Chardin, are represented by anyone authorized to accept or receive service of process, and that service by publication in the manner and form provided in said cases is necessary in the premises.

Thirteenth. Your orator submits himself to the jurisdiction of this Court, and offers to do equity, and to perform such terms and conditions as may be imposed by the Court upon the granting of the relief hereinafter prayed for.

The premises considered, your orator prays that this Court will take jurisdiction of this his bill; that the Compagnie Generale Transatlantique and the Texas Transport & Terminal Company be made parties respondent hereto, and that by appropriate process and orders they be severally required to answer this bill, but not under oath, answer under oath being hereby expressly waived; that this Court's writ of subpoena issue to the said Compagnie Generale Transatlantique and the Texas Transport & Terminal Company, commanding them to answer this bill according to the rule of this Court, but not under oath, answer under oath being hereby expressly waived; that service upon the Compagnie Generale Transatlantique be made upon John T. Michel, Secretary of State of the State of Louisiana, at Baton Rouge, Louisiana; that by appropriate orders and process Scheuch & Company and Paul Chardin be required to appear in this cause and plead or demur to and answer this bill, but not under oath,
14 answer under oath being expressly waived; that pending the final hearing of this bill said Compagnie Generale Transatlantique, the Texas Transport & Terminal Company, and W. H. Hendren, agent, their officers and employees, be enjoined and restrained from removing or disposing of said 994 bales of cotton; that upon the final hearing of this bill this Court will set aside the transfer of the said 996 bales of cotton by the said bankrupt to the said Paul Chardin or Scheuch & Company, or both of them, and hold the same void and of no effect and decree, that the title to the said cotton and the right of possession thereof is in your orator and will permit your orator to take possession of said cotton and administer the same, or the proceeds thereof, for the benefit of the creditors in bankruptcy of Steele, Miller & Company in said bankrutcy proceedings in which said estate is being administered in the United States District Court for

the Northern District of Mississippi and in the ancillary proceedings in the United States District Court for the Eastern District of Louisiana.

And if your orator is mistaken in the relief prayed for, then he prays for such other, further and general relief as in equity and good conscience he may be entitled to.

(Signed) W. A. PERCY,
(Signed) J. A. LAMB,
(Signed) SAUNDERS, DUFOUR & DUFOUR,
Solicitors.

15 State of Louisiana,
Parish of Orleans,
City of New Orleans.

William C. Dufour, being duly sworn, deposes and says:

That he is a member of the firm of Saunders, Dufour & Dufour, attorneys at law, in the City of New Orleans; that he is one of the attorneys for J. A. E. Pyle, trustee; that the said J. A. E. Pyle, trustee, is a resident of the State of Mississippi, and is not now in the State of Louisiana, and is not otherwise represented; and that the allegations contained in the foregoing petition are true and correct to the best of his knowledge and believe, so help him God.

(Signed) WM. C. DUFOUR.

Sworn to and subscribed before me this 12th day of August, 1910.

(Signed) JOHN JANVIER.
[Seal] Notary Public.

16 EXHIBIT "A."

Filed August 18, 1910.

Statement Paul Chardin.

All ninety day acceptances.

Date, 1/27/1910; No. of draft, 2,130; marks, R. I. N. O.; bales, 100; amount, 37,518.00; pretended origin of shipment, ————; date, 1/27/1910; No. of draft, 2,131; marks, R. N. A. M.; bales, 100; amount, 37,440.20; pretended origin of shipment, Winona, Miss.; date, 1/27/1910; No. of

draft, 2,132; marks, R. T. H. F.; bales, 100; amount, 38,281.20; pretended origin of shipment, Winona, Miss.; date, 1/27/1910; No. of draft, 2,133; marks, R. M. B. E.; bales, 100; amount, 37,681.85; pretended origin of shipment, ————; date, 1/27/1910; No. of draft, 2,134; marks, R. N. O. I.; bales, 100; amount, 37,197.75; pretended origin of shipment, Jackson, Miss.; date, 1/27/1910; No. of draft, 2,135; marks, R. M. U. I.; bales, 100; amount, 38,201.70; pretended origin of shipment, Columbus, Miss.; date, 1/27/1910; No. of draft, 2,136; marks, R. S. O. U.; bales, 100; amount, 37,678.65; pretended origin of shipment, Columbus, Miss.; date, 1/27/1910; No. of draft, 2,137; marks, R. D. G. B.; bales, 100; amount, 37,439.40; pretended origin of shipment, Columbus, Miss.; date, 1/27/1910; No. of draft, 2,138; marks, R. B. X. K.; bales, 100; amount, 38,325.70; pretended origin of shipment, West Point, Miss.; date, 1/27/1910; No. of draft, 2,139; marks, R. T. P. N.; bales, 100; amount, 38,258.15; pretended origin of shipment, West Point, Miss. Total bales, 1,000; total amount, 378,022.60. Which, at 5.21, amounts to $72,557.12.

Your orator is not advised of the place of pretended shipment of the 200 bales marked respectively R. I. N. O. and R. M. B. E.

17 EXHIBIT "B."

Filed August, 18, 1910.

Original Shipment of Cotton from Memphis, Tenn., April 8, 1910, to J. D. Hardin.

Date, 4/8/1910; W. B., 297; origin, Memphis; local No. Southern, R. R., J. D. Hardin, Jr., & Co.; marks, R. I. N. O.; No. bales, 100; date, 4/8/1910; W. B., 297; origin, Memphis; local No. Southern R. R., J. D. Hardin, Jr., & Co.; marks, R. N. A. M.; No. bales, 100; date, 4/8/1910; W. B., 297; origin, Memphis; local No. Southern R. R., J. D. Hardin, Jr., & Co.; marks, R. T. H. F.; No. bales, 100; date, 4/8/1910; W. B., 289; origin, Memphis; local No. Southern R. R., J. D. Hardin, Jr., & Co.; marks, R. M. B. E.; No. bales, 100; date, 4/8/1910; W. B., 290; origin, Memphis;

local No. Southern R. R., J. D. Hardin, Jr., & Co.; marks, R. N. O. I.; No. bales, 100; date, 4/8/1910; W. B., 291; origin, Memphis; local No. Southern R. R., J. D. Hardin, Jr., & Co.; marks, R. M. N. I.; No. bales, 100; date, 4/8/1910; W. B., 292; origin, Memphis; local No. Southern R. R., J. D. Hardin, Jr., & Co.; marks, R. S. O. U.; No. bales, 100; date, 4/8/1910; W. B., 293; origin, Memphis; local No. Southern R. R., J. D. Hardin, Jr., & Co.; marks, R. D. G. B.; No. bales, 100; date, 4/8/1910; W. B., 294; origin, Memphis; local No. Southern R. R., J. D. Hardin, Jr., & Co.; marks, R. B. X. K.; No. bales, 100; date, 4/8/1910; W. B., 295; origin, Memphis; local No. Southern R. R., J. D. Hardin, Jr., & Co.; marks, R. T. P. N.; No bales, 100. Total No. bales, 1,000.

18 EXHIBIT "C."

Filed August 18, 1910.

Statement of Delivery of Cotton Shipped Local From Memphis, Tenn., S/o to J. D. Hardin, Jr., & Co., and Delivered to the Texas Transport and Terminal Company, Agents for the Str. Texas, as follows:

Date of delivery, April 23; custody; marks, R. I. N. O.; date of delivery, April 19; custody; marks, R. N. A. M.; date of delivery, April 21; custody; marks, R. T. H. F.; date of delivery, April 20; custody; marks, R. M. B. E.; date of delivery, April 20; custody; marks, R. N. O. I.; date of delivery, April 21; custody; marks, R. M. U. I.; date of delivery, April 21; custody; marks, R. S. O. U.; date of delivery, April 21; custody; marks, R. D. G. B.; date of delivery, April 21; custody; marks, R. B. X. K.; date of delivery, April 21; custody; marks, R. T. P. N.

19 United States District Court, Eastern District of Louisiana.

J. A. E. Pyle, Trustee,
vs. No. 14,242
Texas Transport & Terminal Company et als.

Considering the allegations of this bill and the allegations in support thereof,

It is now ordered: That this bill be filed and process issue as prayed for.

It appearing to the Court that there is danger of irreparable injury to complainant unless the acts sought to be enjoined herein are restrained until the hearing of a motion for injunction in this case, it is ordered:

1. That the defendants, the Texas Transport & Terminal Company and the Compagnie Generale Transatlantique, and each of them, and the individual members thereof, and each of their servants, agents and employees, be and they are hereby restrained and enjoined until the further order of the Court herein from removing from the jurisdiction of this Court the 1000 bales of cotton described in the bill filed in this cause, leave being given to the said Texas Transport & Terminal Company and the Compagnie Generale Transatlantique, or any other party in interest, to apply after five days notice to complainant's counsel for permission to bond said cotton.

2. That the defendants, Texas Transport & Terminal Company and Compagnie Generale Transatlantique, and each of them show cause before this Court in the United States court room at the City of New Orleans, at eleven o'clock a. m., on the first Monday in November, to-wit, Monday the seventh day of November, 1910, why an injunction pendente lite as prayed for in the said bill should not be issued.

20 3. That this restraining order shall be in force and effect from the date hereof until the hearing of complainant's motion for an interlocutory injunction herein, provided that complainant furnish bond within ten days from the date of this order in the sum of $1000.00, payable to defendant with surety approved by the Clerk of this Court and

conditioned substantially as hereinafter mentioned. The condition of said bond shall be substantially as follows:

Whereas, a restraining order has been made in the above numbered and entitled cause by the terms of which the defendants and each of them, and each of their agents and employees are restrained until an application for an interlocutory injunction herein is determined from doing or causing to be done certain acts.

Now, therefore, if the above mentioned J. A. E. Pyle, receiver, shall pay or cause to be paid all damages caused by the issuance of said restraining order, and the costs of this cause in connection therewith in the event that said restraining order is dissolved or vacated as having been wrongfully issued, or because the said acts are improperly restrained, then this bond to be void, otherwise to remain in full force and effect.

It further appearing to the Court that said defendants, Scheuch & Company and Fred Scheuch and Albert Schilling, the individual members of said firm, and Paul Chardin, are not inhabitants of the Eastern District of Louisiana, upon whom service of process can be made;

It is ordered: That the said defendants, Scheuch
21 & Company and Fred Scheuch and Albert Schilling, individual members of said firm, and Paul Chardin, shall appear, plead, answer or demur by the first Monday of November, 1910; that a copy of this order be served upon said defendants wherever found, and if such personal service is not practicable, that said defendants be notified of this order so directing them to appear, plead, answer or demur by the first Monday of November, 1910, by publication thereof in a daily newspaper in the City of New Orleans, La., not less than once a week for six consecutive weeks.

(Signed) RUFUS E. FOSTER, Judge.

August 16th, 1910.

22 Notation as to the Publication of a Certified Copy of the Foregoing Order:

Published in the
"New Orleans Item" on
Monday, Sept'r 12th, 1910, and on

Monday, Sept'r 19th, 1910, and on
Monday, Sept'r 26th, 1910, and on
Monday, Oct'r 3rd, 1910, and on
Monday, Oct'r 10th, 1910, and on
Monday, Oct'r 17th, 1910, and on

(Signed) F. H. MORTIMER, Clerk.
By GEO. W. ROBERTSON,
Dy Clk.

23 MARSHAL'S RETURNS ON ORDER ON BILL OF COMPLAINT.

14,242.

Filed August 30, 1910.

Received by U. S. Marshal, New Orleans, La., Aug. 18/10. And on Aug. 25/10, I served the original writ of which this is a certified copy on the Texas Transport and Terminal Co., by handing the same to W. H. Hendren, local manager, in person, in their office in New Orleans, La.

(Signed) VICTOR LOISEL,
U. S. Marshal.
(Signed) By B. F. QUEEN, Dy.

Received by U. S. Marshal, New Orleans, La., Oct. 18/10. And on the 26th day of same month I served copy hereof on E. J. McGivney, Asst. Sect'y of State of La., by handing same to him in person in Baton Rouge, La.

(Signed) VICTOR LOISEL,
U. S. Marshal.
(Signed) By T. I. GALBRITH, Dy.

24 SUBPOENA IN CHANCERY.

Issued August 18th, 1910.

United States of America,

The President of the United States,
To the Marshal of the Eastern District of Louisiana—
Greeting:

You are hereby commanded to summon the Compagnie Generale Transatlantique, through John T. Michel, Secretary of State of the State of Louisiana, at Baton Rouge, Louisiana, to appear before a District Court of the United States of America, to be holden at the City of New Orleans, Louisiana, on the first Monday of November, 1910, then and there to answer a bill in chancery, filed against it and others, wherein J. A. E. Pyle, trustee in bankruptcy of Steele, Miller & Company, is complainant and said the Compagnie Generale Transatlantique; Texas Transport & Terminal Company; F. Scheuch & Company and Paul Chardin are defendants.

Herein fail not, and have you then and there this writ, with your indorsement thereon, how you have executed same.

Witness, the Honorable Rufus E. Foster, Judge of the District Court of the United States, at New Orleans, La., this 18th day of August, in the year of our Lord one thousand nine hundred and ten, and 135th year of American independence.

[Seal of Court]
(Signed) FRANK H. MORTIMER, Clerk.

The defendant is hereby notified that it is required to enter its appearance in the Clerk's Office of the United States District Court on or before the first Monday of November, 1910, otherwise the bill may be taken pro confesso.

(Signed) FRANK H. MORTIMER, Clerk.

Clerk's Office:
A true copy.
[Seal] (Signed) FRANK H. MORTIMER,
Clerk.

25 [Indorsed on back:] No. 14,242. United States District Court, Eastern District of Louisiana, New

Orleans Division. J. A. E. Pyle, Trustee, vs. Texas Transport and Terminal Company, et als. Subpoena in Chancery. Marshal's Return.

MARSHAL'S RETURN ON SUPOENA IN CHANCERY.

Filed August 30th, 1910.

Received by U. S. Marshal, New Orleans, La., Aug. 18/10. And on the 26th day of the same month and year I served the original of which this writ is a certified copy on John T. Michel, Secretary of the State of Louisiana, by handing the same to the Asst. Secretary of the State of Louisiana, Eugene J. McGivney, in person, in the City of Baton Rouge, Louisiana.

(Signed) VICTOR LOISEL,
U. S. Marshal.

(Signed) By T. I. GALBRETH,
Deputy U. S. Marshal.

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26 SUBPOENA IN CHANCERY.

Issued August 18th, 1910.

United States of America.

The President of the United States,

To the Marshal of the Eastern District of Louisiana—Greeting:

You are hereby commanded to summon the Texas Transport & Terminal Company to appear before a District Court of the United States of America, to be holden at the City of New Orleans, Louisiana, on the first Monday of November, 1910, then and there to answer a bill in chancery, filed against it and others, wherein J. A. E. Pyle, trustee in bankruptcy of Steele, Miller & Company, is complainant, and said the Compagnie Generale Transatlantique, Texas Transport & Terminal Company, F. Scheuch & Company and Paul Chardin are defendants.

Herein fail not, and have you then and there this writ, with your indorsement thereon, how you have executed the same.

Witness, the Honorable Rufus E. Foster, Judge of the District Court of the United States, at New Orleans, La., this 18th day of August, in the year of our Lord one thousand nine hundred and ten, and 135th year of American Independence.

[Seal of Court]

(Signed) FRANK H. MORTIMER, Clerk.

The defendant is hereby notified that it is required to enter its appearance in the Clerk's Office of the United States District Court on or before the first Monday of November, 1910, otherwise the bill may be taken pro confesso.

(Signed) FRANK H. MORTIMER, Clerk.

Clerk's Office:

A true copy.

[Seal] (Signed) FRANK H. MORTIMER, Clerk.

27 [Indorsed on back:] No. 14242. United States District Court, Eastern District of Louisiana, New Orleans Division. J. A. E. Pyle, Trustee, vs. Texas Transport & Terminal Company, et als. Subpoena in Chancery. Marshal's Return.

MARSHAL'S RETURN ON SUBPOENA IN CHANCERY.

Filed August 30th, 1910.

Received by U. S. Marshal, New Orleans, La., Aug. 18/10. And on Aug. 25/10, I served the original of which this is a certified copy on the Texas Transport and Terminal Co. by handing the same to W. H. Hendren, local manager in New Orleans, in their office in New Orleans, La.

(Signed) VICTOR LOISEL
U. S. Marshal.

(Signed) By B. F. QUEEN, Dy.

28 BOND OF J. A. E. PYLE, TRUSTEE.

Filed August 25th, 1910.

United States District Court, Eastern District of Louisiana.

J. A. E. Pyle, Trustee,
vs. No. 14242
Texas Transport and Terminal Company, et als.

Know All Men By These Presents: That we, J. A. E. Pyle, trustee of Steele, Miller & Company, bankrupt, appointed by and acting under authority of the District Court of the United States for the Northern District of Mississippi, as principal, and William C. Dufour, as surety, are held and firmly bound unto the Compagnie Generale Transatlantique, the Texas Transport & Terminal Company, F. Scheuch & Company, and Paul Chardin, defendants herein, for the use and benefits of defendants in the below mentioned suit, in the full and true sum of one thousand dollars ($1000.00) lawful money of the United States of America, for the payment whereof we bind ourselves, our heirs, executors, successors, and assigns firmly by these presents.

Thus done and signed in the City of New Orleans, State of Louisiana, on this 24th day of August, A. D. 1910.

Now, therefore, the condition of the above obligation is such that,

Whereas, the said J. A. E. Pyle, trustee in bankruptcy of Steele, Miller & Company, did, in the proceedings No. 14242 of the docket of the United States District Court for the Eastern District of Louisiana, entitled "J. A. E. Pyle, Trustee, versus Texas Transport & Terminal Co., et als.," apply for and obtain a restraining order against the Compagnie Generale Transatlantique and the Texas Transport & Terminal Company, restraining and enjoining them, and each of them, and the individual members thereof, and each of their servants, agents, and employees, until the further order of the Court herein, from removing from the jurisdiction of the Court the 1000 bales of cotton described in the pleadings filed in this cause upon condition that said trustee, J. A. E. Pyle, should furnish bond.

Now, therefore, if the above mentioned J. A. E.
29 Pyle, trustee, shall pay or cause to be paid all damages caused by the issuance of said restraining order, and the costs of this cause in connection therewith in the event that said restraining order is dissolved or vacated as having been wrongfully issued, or because the said acts are improperly restrained, then this bond to be void, otherwise to remain in full force and effect.

(Signed) J. A. E. PYLE, Trustee.
(Signed) By SAUNDERS, DUFOUR & DUFOUR.
(Signed) WM. C. DUFOUR.

William C. Dufour, surety on the within bond, being duly sworn, says that he resides in the City of New Orleans, Louisiana, and is worth the sum of one thousand dollars ($1000.00) over and above all his just debts and liabilities.

(Signed) WM. C. DUFOUR.

Sworn to and subscribed before me this 24th day of August, 1910.

(Signed) ROSS P. BREAZEALE,
N. P. [Seal]

This bond is approved for the sum of one thousand dollars.

(Signed) GEO. W. ROBERTSON,
Deputy Clerk.

30 RESTRAINING ORDER.

Issued August 25th, 1910.

United States of America.

District Court of the United States, Eastern District of Louisiana, New Orleans Division.

J. A. E. Pyle, Trustee,
vs. No. 14242
Texas Transport & Terminal Company et als.

The President of the United States,

To the Texas Transport & Terminal Company and the Compagnie Generale Transatlantique—Greeting:

Whereas, it has been represented unto us in our said District Court on the part of J. A. E. Pyle, trustee in bankruptcy of Steele, Miller & Company, in a bill of equity lately exhibited against you, and each of you, touching certain matters and things therein set forth; and, whereas, the Honorable Rufus E. Foster, the Judge of our said Court, upon due consideration thereof, has made and allowed an order in said cause, whereby you, and each of you, are required to show cause on the seventh day of November, 1910, at 11 a. m., why an injunction should not issue as prayed for in said bill of complaint; and, whereas, the said Judge has granted and allowed an order restraining you and each of you immediately and forthwith and during the pendency of said motion for an injunction to the full extent and effect as prayed for in said bill of complaint.

Now, therefore, in consideration of the premises and of the allegations in said bill of complaint contained, you, the said Texas Transport & Terminal Company and the said Compagnie Generale Transatlantique, your agents, attorneys and servants and each of you are hereby commanded and strictly enjoined under the penalty of the law, that you and each of you absolutely refrain and desist from removing from the jurisdiction of this Court the 1000 bales of cotton described in the bill filed in this cause. And that you the said Texas Transport & Terminal Company and the said Compagnie Generale

Transatlantique, your agents, attorneys and servants, and each of you, remain so inhibited and restrained until the further order of our said Court in the premises.

Witness, the Honorable Rufus E. Foster, Judge of said Court, at the City of New Orleans, La., this 25th day of August, in the year of our Lord, 1910.

(Signed) FRANK H. MORTIMER, Clerk.
By GEO. W. ROBERTSON,
Deputy Clerk.

A true copy.
[Seal] (Signed) GEO. W. ROBERTSON,
Deputy Clerk

31 [Indorsed on back:] No. 14242. U. S. District Court, Eastern District of Louisiana, New Orleans Division. J. A. E. Pyle, Trustee, vs. Texas Transport & Terminal Company, et als. Restraining Order.

MARSHAL'S RETURNS ON RESTRAINING ORDERS.

Filed September 12th, 1910.

Received by U. S. Marshal, New Orleans, La., Aug. 25/10. And on same day, I served the original writ of which this writ is a certified copy on the Texas Transport, Terminal Co. et als., by handing the same to W. H. Hendren, local manager, to him in person in their office in New Orleans, La.

VICTOR LOISEL,
U. S. Marshal.
(Signed) By B. F. QUEEN, Dy.

Received by U. S. Marshal, New Orleans, La., Aug. 25/10. And on Sept. 10/10, I served the original writ of which this is a certified copy on the Compagnie General Transatlantique by handing the same to Eugene McGivney, Ass't Sec. of State, in Baton Rouge, La.

VICTOR LOISEL,
U. S. Marshal.
(Signed) By T. F. LAICHE, Dy.

32 APPEARANCE OF GEORGE H. TERRIBERRY AS SOLICITOR FOR TEXAS TRANSPORT & TERMINAL COMPANY AND COMPAGNIE GENERALE TRANSATLANTIQUE.

Filed September 6, 1910.

District Court of the United States, Eastern District of Louisiana, New Orleans Division.

J. A. E. Pyle, Trustee,
vs. No. 14242
Texas Transport & Terminal Company et als.

To the Clerk of said Court:

Please enter my appearance as solicitor for the Texas Transport & Terminal Company and Compagnie Generale Transatlantique, defendants in the above styled and numbered cause.

(Signed) GEO. H. TERRIBERRY.

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33 SPECIAL APPEARANCE OF PAUL CHARDIN.

Filed October 7th, 1910.

United States District Court, Eastern District of Louisiana.

J. A. E. Pyle, Trustee,
vs. No. 14242.
Texas Transport and Terminal Company, et als.

Special and Qualified Appearance of Paul Chardin.

Paul Chardin, made one of the defendants herein, now, through its undersigned solicitors, files this its special appearance herein, reserving the right to object to the jurisdiction of this Court to grant the relief herein sought by complainant,

and appearing under protest specially and solely for said purpose and for the protection of its rights to and in respect to the cotton mentioned in said complaint.

October 7th, 1910.

(Signed) DENEGRE & BLAIR,
Solicitors.

To the Clerk of said Court:

Please enter the above special and qualified appearance of Paul Chardin.

(Signed) DENEGRE & BLAIR,
Solicitors for the Above Named Defendant.

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34 HEARING ON APPLICATION FOR INJUNCTION PENDENTE LITE, AND CONTINUANCE.

Extract From the Minutes, May Term, 1910.

New Orleans, Monday, November 7th, 1910.

Court met pursuant to adjournment.

Present: Hon. Rufus E. Foster, Judge.

J. A. E. Pyle, Trustee,
vs. No. 14,242.
Texas Transport and Terminal Company, et als.

The application for an injunction pendente lite herein, fixed for hearing this day, was called.

Present: Messrs. Saunders, Dufour & Dufour, Solicitors for Complainant.

Present: George H. Terriberry, Esq., Solicitor for Texas Transport & Terminal Co., et als., Defendants.

Present: Messrs. Denegre & Blair, Solicitors for Paul Chardin, Defendant.

Whereupon, on motion of solicitors for complainant, it is ordered that the application for an injunction pendente lite be continued until Monday, November 21st, 1910, at 11 A. M., and that the restraining order heretofore issued herein remain in force until the further order of the Court.

35 HEARING ON APPLICATION FOR INJUNCTION PENDENTE LITE, AND CONTINUANCE.

Extract From the Minutes, November Term, 1910.

New Orleans, Monday, November 21st, 1910.

Court met.

Present: Hon. Rufus E. Foster, Judge.

J. A. E. Pyle, Trustee,

vs. No. 14,242.

Texas Transport and Terminal Company, et als.

The application for an injunction pendente lite herein, set for hearing this day, was called.

Present: Messrs. Saunders, Dufour & Dufour, Solicitors for Complainant.

Present: George H. Terriberry, Esq., Solicitor for Texas Transport & Terminal Co., et als., Defendants.

Present: Messrs. Denegre & Blair, Solicitors for Paul Chardin, Defendant.

Whereupon, on motion of the solicitors for the parties in interest, it is ordered that the hearing of said application be continued until Friday, December 2nd, 1910, at eleven o'clock A. M.

It is further ordered, on motion of solicitors for complainant, that the restraining order heretofore issued herein remain in force until the further order of the Court.

36 HEARING ON APPLICATION FOR INJUNCTION PENDENTE LITE, IN PART AND CONTINUANCE.

Extract From the Minutes, November Term, 1910.

New Orleans, Friday, December 2nd, 1910.

Court met pursuant to adjournment.

Present: Hon. Rufus E. Foster, Judge.

J. A. E. Pyle, Trustee,

vs. No. 14,242.

Texas Transport and Terminal Company, et als.

The application for an injunction pendente lite herein, set for hearing this day, was called.

Present: Messrs. Saunders, Dufour & Dufour, Solicitors for Complainant.

Present: George H. Terriberry, Esq., Solicitor for Texas Transport & Terminal Co., et als., Defendants.

Present: Messrs. Denegre & Blair, Solicitors for Paul Chardin, Defendant.

Whereupon the solicitors for the respective parties filed notes of evidence in their behalf.

After hearing argument in part, it was ordered by the Court that the cause be continued until Saturday, December 3rd, 1910, at ten o'clock A. M., for further argument.

37 NOTE OF EVIDENCE ON BEHALF OF COMPLAINANT.

Filed December 2nd, 1910.

United States District Court, Eastern District of Louisiana.

J. A. E. Pyle, Trustee,
vs. No. 14,242.
Texas Transport & Terminal Company, et als.

Note of Evidence on Behalf of Complainant.

Solicitors for complainant offer, produce and file in evidence:

(1) Affidavit of Elmer E. Clark, business manager of the New Orleans Item, a daily newspaper published in the City of New Orleans, which affidavit is sworn to before Ross E. Breazeale, notary public, on November 16, 1910, to which is attached copy of advertisement of order of Court.

(2) Affidavit of C. H. G. Linde, taken before John Janvier, notary public, on December 2, 1910, together with the exhibit attached thereto, said exhibit containing a memorandum of 2498 bales of cotton, together with their marks, etc.

(3) Affidavit of Edward S. Elliott, taken before John Janvier, notary public, on December 2nd, 1910, together with the exhibit thereto attached and statement showing dealings of Steele, Miller & Company with the Bank de Mulhouse, Comptoir Escompte de Mulhouse, Paul Chardin, and Societe Generale.

(4) Affidavit of William C. Dufour taken before John Janvier, notary public, of date November 28th, 1910, together with exhibits thereto, said exhibits being two copies of the Havre Bulletin of date April 27th and April 28th, inclusive.

(5) Affidavit of William C. Dufour before John Janvier, notary public, on November 25th, together with exhibit at-

tached thereto, said exhibit being a copy of the Liverpool Daily Post of date November 27th, 1910.

38 (6) Affidavit of Andre Lafargue, taken before John Janvier, notary public, on November 25, 1910, together with exhibit attached thereto, said exhibit being testimony of W. H. Hendren taken before the Hon. William A. Bell, referee in bankruptcy.

(7) Affidavit of Andre Lafargue, taken before John Janvier, notary public, on November 25, 1910, together with exhibit thereto, said exhibit being the testimony of J. D. Hardin taken before the Hon. William A. Bell, referee in bankruptcy.

(8) Affidavit of William C. Dufour, taken before John Janvier, notary public, on December 2, 1910, together with an exhibit thereto attached, said exhibit being a certified copy of the petition filed in the matter of Cohn & Company vs. Steele, Miller & Company in the United States Circuit Court for the State of Mississippi, together with a certified copy of the judgment appointing the receiver for the firm of Steele, Miller & Company.

The entire proceeding, including petition for adjudication in involuntary bankruptcy, order appointing J. A. E. Pyle temporary receiver, and judgment adjudicating Steele, Miller & Company and the individual members thereof involuntary bankrupts, together with the order appointing J. A. E. Pyle trustee of Steele, Miller & Company, and the individual members thereof, and a certified copy of the bond of said J. A. E. Pyle, same being embraced in the matter entitled Knoop Fabarius & Company, et als., vs. Steele, Miller & Company, No. 123 of the docket of the United States District Court for the Northern District of Mississippi, same being embraced in the ancillary proceedings No. 1430 of the docket of this Court entitled Knoop Fabarius, et al., vs. Steele, Miller & Company.

39 United States District Court, Eastern District of Louisiana, New Orleans Division.

J. A. E. Pyle, Trustee,
versus No. 14,242.
Texas Transport & Terminal Company, et als.

Note: Evidence offered and filed on behalf of the complainant, and referred to in his note of evidence, copied into the transcript of appeal in the case of J. A. E. Pyle, Trustee, vs. Texas Transport & Terminal Company, et als., No. 14,240 of the docket of the United States District Court, Eastern District of Louisiana, New Orleans Division, in accordance with the praecipe for transcripts of appeal.

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40 NOTE OF EVIDENCE OF TEXAS TRANSPORT & TERMINAL COMPANY AND COMPAGNIE GENERALE TRANSATLANTIQUE.

Filed December 2nd, 1910.

In the District Court of the United States for the Eastern District of Louisiana.

J. A. E. Pyle, Trustee,
vs. No. 14,242.
Texas Transport & Terminal Company, et als., Including Paul Chardin.

Note of evidence on behalf of Texas Transport & Terminal Company and Compagnie Generale Transatlantique, defendants herein, on the trial of the rule to show cause why an injunction pendente lite should not be issued.

Counsel for the above named defendants offers, reads, and filed in evidence the following affidavits and exhibits:

1. The affidavit of William H. Hendren, local manager of Texas Transport & Terminal Company, agent for Compagnie Generale Transatlantique, sworn to before Charles F. Fletchinger, notary public, Parish of Orleans, State of Louisiana, November 7, 1910.

41 United States District Court, Eastern District of Louisiana, New Orleans Division.

J. A. E. Pyle, Trustee,
versus No. 14,242.
Texas Transport & Terminal Company, et als.

Note: Evidence offered and filed on behalf of the Texas Transport & Terminal Company and Compagnie Generale Transatlantique, and referred to in their note of evidence, copied into the transcript of appeal in the case of J. A. E. Pyle, Trustee, vs. Texas Transport & Terminal Company, et als., No. 14,240 of the docket of the United States District Court, Eastern District of Louisiana, New Orleans Division, in accordance with the praecipe for transcripts of appeal.

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42 NOTE OF EVIDENCE ON BEHALF OF PAUL CHARDIN ON RULE FOR INJUNCTION PENDENTE LITE.

Filed December 2, 1910.

United States District Court, Eastern District of Louisiana.

J. A. E. Pyle, Trustee,
vs. No. 14,242.
Texas Transport and Terminal Company, et als.

Note of evidence on behalf of Paul Chardin, defendant herein, on the trial of the rule to show cause why an injunction pendente lite should not be issued.

Counsel for the above-named defendant offers, reads and files in evidence the following affidavits and exhibits:

1. The affidavits of Frans Luzell, director of the Bank of Mulhouse; of Elisee Paul Dubois, managing director of the Societe Generale; of Emile Level, managing director of the Comptoir d'Escompte de Mulhouse; and of Alphonse Riss, manager of the firm of Paul Chardin in Havre, all sworn to

before John Preston Beecher, vice consul of the United States at Havre, France, on October 24, 1910.

2. Affidavit of J. P. Blair before Henry H. Chaffe, notary public, November 9, 1910, and copies of the 10 drafts annexed to said affidavit purporting to be the drafts referred to in the affidavit of said—

3. Affidavit of J. P. Blair before Henry H. Chaffe, notary public, November 9, 1910, and the exhibits annexed thereto, namely, duplicate copies of the 10 through bills of lading and the 10 custody bills of lading referred to in the affidavit of

4. Affidavit of J. P. Blair sworn to before Henry H. Chaffe, notary public, November 9, 1910, and the exhibits annexed thereto, namely, two notes from Scheuch and Company dated May 3rd and May 10th, 1910, purporting to
43 transmit to Paul Chardin ten certain custody bills of lading therein mentioned and purporting to be the notes referred to in the said affidavit of Alphonse Riss.

5. Affidavit of Albert Schilling of November 18, 1910, with the letters of December 8th and 23rd, 1909, embodied therein.

6. Affidavits of Frans Lyzell, Elisee Paul Dubois and Emile Level before John Preston Beecher, U. S. Vice-Consul, November 18, 1910.

7. Affidavits of Albert Schilling and of Ferd. Scheuch, entitled and numbered in this cause before the said John Preston Beecher, U. S. Vice-Consul, November 18, 1910.

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44 United States District Court, Eastern District of Louisiana, New Orleans Division.

J. A. E. Pyle, Trustee,
versus No. 14,242.
Texas Transport & Terminal Company, et als.

Note: Evidence offered and filed on behalf of Paul Chardin, and referred to in his note of evidence, copied into the

transcript of appeal in the case of J. A. E. Pyle, Trustee, vs. Texas Transport & Terminal Company, et als., No. 14,240 of the docket of the United States District Court, Eastern District of Louisiana, New Orleans Division, in accordance with the praecipe for transcripts of appeal.

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45 RESUMED HEARING ON APPLICATION FOR INJUNCTION PENDENTE LITE.

Extract From the Minutes, November Term, 1910.

New Orleans, Saturday, December 3rd, 1910.

Court met pursuant to adjournment.

Present: Hon. Rufus E. Foster, Judge.

J. A. E. Pyle, Trustee,

vs. No. 14,242.

Texas Transport and Terminal Company, et al.

The hearing of this cause, as continued from Friday, December 2nd, was this day resumed.

Present: The solicitors for all parties in interest.

Whereupon, after hearing further argument, the cause was submitted, and taken under advisement.

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46 DECREE ON APPLICATION FOR INJUNCTION.

Extract From the Minutes, November Term, 1910.

New Orleans, Monday, January 2nd, 1911.

Court met pursuant to adjournment.

Present: Hon. Rufus E. Foster, Judge.

J. A. E. Pyle, Trustee,

vs. No. 14,242.

Texas Transport and Terminal Company, et al.

This cause came on to be heard at this term upon the application of complainant for an injunction pendente lite, and

was argued by the solicitors for the respective parties, and submitted, when the Court took time to consider.

Upon due consideration whereof, and for the reasons assigned in writing, and on file in Cause No. 14,240 of the docket of this Court, it is ordered that an injunction pendente lite issue herein as prayed for.

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47 INJUNCTION ISSUED.

January 2nd, 1911.

United States of America, District Court of the United States, Eastern District of Louisiana.

J. A. E. Pyle, Trustee,
vs. No. 14,242.
Texas Transport & Terminal Company, et als.

The President of the United States of America.

To the Texas Transport & Terminal Company and the Compagnie Generale Transatlantique, Greeting:

Whereas, it has been represented unto us in our said District Court on the part of J. A. E. Pyle, trustee in bankruptcy of Steele, Miller & Company, in a bill in equity lately exhibited against you and each of you touching certain matters and things therein set forth,

Now, therefore, in consideration of the premises and of the allegations in said bill in equity contained, you, the said Texas Transport & Terminal Company and the said Compagnie Generale Transatlantique, your attorneys and each of you, are hereby commanded and strictly enjoined, under the penalty of the law, that you absolutely refrain and desist from removing from the jurisdiction of this Court the 1000 bales of cotton described in the bill filed in this cause and that you remain so inhibited and enjoined until the further order of our said Court in the premises.

Witness, the Honorable Rufus E. Foster, Judge of said

Court, at the City of New Orleans, this second day of January, in the year of our Lord, 1911.

[Seal] (Signed) FRANK H. MORTIMER, Clerk.

Clerk's Office:

A true copy.

[Seal] (Signed) FRANK H. MORTIMER, Clerk.

48 [Indorsed:] No. 14242. U. S. District Court, Eastern District of Louisiana, New Orleans Division. J. A. E. Pyle, Trustee, vs. Texas Transport and Terminal Company, et als. Injunction to Texas Transport & Terminal Co. & Compagnie Generale Transatlantique.

MARSHAL'S RETURN ON INJUNCTION.

Filed January 3rd, 1911.

Received by U. S. marshal, New Orleans, La., Jan. 3/11, and on the same day, month and year I served the original of which this writ is a certified copy on the Texas Transport and Terminal Company by handing the same to the agent thereof, Mr. W. H. Hendren, in person, in the office of said company, in the City of New Orleans, Louisiana; and on the Compagnie Generale Transatlantique by handing the same to the agent thereof, Mr. N. P. Hedrick, in person, in the City of New Orleans, La.

VICTOR LOISEL,
U. S. Marshal.

(Signed) By E. M. KINLER,
Deputy U. S. Marshal.

43 MOTION FOR EXTENSION OF TIME, AND ORDER.

Extract From the Minutes, November Term, 1912.

New Orleans, Monday, January 2nd, 1911.

Court met pursuant to adjournment.

Present: Hon. Rufus E. Foster, Judge.

J. A. E. Pyle, Trustee,
vs. No. 14242.
Texas Transport & Terminal Company, et al.

Now through its solicitors, Denegre & Blair, comes Paul Chardin, and still appearing specially and qualifiedly, under protest, and not waiving but reserving his right to object to the jurisdiction of this Court, asks the Court to grant him an extension of time until the next rule day in February to file his exceptions to the jurisdiction or such other responsive pleadings as he may desire to file in this cause.

The foregoing motion having been presented to the Court, it is ordered that the same be and it is allowed.

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50 MOTION TO SELL COTTON.

Filed January 4, 1911.

United States District Court, Eastern District of Louisiana.

J. A. E. Pyle, Trustee,
vs. No. 14,242.
Texas Transport & Terminal Company, et als.

On motion of Dufour & Dufour and W. A. Percy, solicitors for complainant herein, and on suggesting to the Court that, on the —— day of May, 1910, at the suit of J. A. E. Pyle, receiver, the Texas Transport & Terminal Company and the Compagnie Generale Transatlantique were enjoined from removing from the jurisdiction of this Court certain cotton marked as follows:

100 bales R I N O
100 bales R N A M
100 bales R T H F
100 bales R M B E
100 bales R T P N
100 bales R N O I
100 bales R M N I
100 bales R S O N
100 bales R D G B
100 bales R B X K

which said cotton was then loaded on the steamship "Texas"; and

On further suggesting that on the 16th day of August, in the within numbered and entitled cause and on the application of mover as trustee, this Honorable Court did grant a restraining order against the Texas Transport & Terminal Company and the Compagnie Generale Transatlantique, their agents and employees, prohibiting them from removing from the jurisdiction of the Court the cotton herein referred to until the application for the interlocutory injunction prayed for could be determined; and

On further suggesting to the Court that on the 2nd day of January, 1911, this Court granted the application for said interlocutory injunction and directed the issuance
51 of said preliminary injunction against the said Texas Transport & Terminal Company and the Compagnie Generale Transatlantique; and

On further suggesting to the Court that the original orders, entered herein on the application of the temporary receiver and on the application of the trustee, gave to all parties at interest the right to apply to this Court for permission to bond said cotton or to otherwise dispose of same, but that the defendants herein, to-wit, Scheuch & Company and Paul Chardin, have failed to avail themselves of said privilege and right, and that the said Scheuch & Company has not entered any appearance and that Paul Chardin has only entered a limited appearance for the purpose of contesting the jurisdiction of the Court and objecting to the issuance of the preliminary injunction; and

On further suggesting that the Compagnie Generale Transatlantique and the Texas Transport & Terminal Company have

appeared in this cause and pleaded and asked to be relieved of the charge for the said cotton; and

On further suggesting that the cotton herein should be sold and the proceeds deposited in the registry of the Court,

It is ordered, that the Texas Transport & Terminal Company and the Compagnie Generale Transatlantique, through their solicitor, Mr. George H. Terriberry, show cause on the 6th day of February, 1911, why the cotton in contest herein should not be sold and the proceeds deposited in accordance with the orders of this Court.

It is further ordered, that the Paul Chardin, through his solicitors, Messrs. Denegre & Blair, be served with a copy of this motion.

52 MARSHAL'S RETURN ON MOTION TO SELL COTTON.

Filed January 6, 1911.

Received by U. S. marshal, New Orleans, La., Jan. 5/11, and on the 6th day of the same month I served copy hereof on the following parties, in New Orleans, in the manner following, to-wit: Denegre & Blair, by leaving same at their office in the hands of their stenographer, Chas. P. Gould; on Geo. H. Terriberry, by leaving same at his office in the hands of his stenographer, F. E. Zimmerman.

(Signed) VICTOR LOISEL,
U. S. Marshal.

(Signed) By B. F. QUEEN,
Dep. U. S. Marshal.

53 BOND OF TRUSTEE ON INJUNCTION PENDENTE LITE.

Filed January 9th, 1911.

United States District Court, Eastern District of Louisiana.

J. A. E. Pyle, Trustee,
vs. No. 14,242.
Texas Transport & Terminal Company, et als.

Know all men by these presents, that we, J. A. E. Pyle, trustee of Steele, Miller & Company, Bankrupt, appointed by and acting under authority of the District Court of the United States for the Northern District of Mississippi, as principal, and Southwestern Surety Insurance Company of Oklahoma, as surety, are held and firmly bound unto the Compagnie Generale Transatlantique, the Texas Transport & Terminal Company, F. Scheuch & Company and Paul Chardin, defendants herein, for the use and benefits of defendants in the below mentioned suit, in the full and true sum of four thousand two hundred and fifty dollars ($4,250.00) lawful money of the United States of America, for the payment whereof we bind ourselves, our heirs, executors and assigns firmly by these presents.

Thus done and signed in the City of New Orleans, State of Louisiana, this 9th day of January, A. D. 1911.

Now, therefore, the condition of the above obligation is such that, whereas, the said J. A. E. Pyle, trustee in bankruptcy of Steele, Miller & Company, did in the proceedings No. 14,242 of the docket of the United States District Court for the Eastern District of Louisiana, entitled J. A. E. Pyle, Trustee, vs. Texas Transport & Terminal Company, et als., obtain an injunction pendente lite, restraining and enjoining the Texas Transport & Terminal Company and the Compagnie Generale Transatlantique, and each of them, and each of their servants, agents and employees until the further orders of the Court from removing from the jurisdiction of
54 the Court the 1000 bales of cotton described in the pleadings filed in this cause upon condition that the said trustee shall furnish bond.

Now, therefore, if the above mentioned J. A. E. Pyle, trus-

tee, shall pay, or cause to be paid, all damages caused by the issuance of said injunction pendente lite, and the costs of this cause connection therewith in the event that said injunction pendente lite is dissolved or vacated as having been wrongfully issued, or because the said acts are improperly enjoined, then this bond to be void, otherwise to remain in full force and effect.

J. A. E. PYLE, Trustee,
(Signed) By WM. C. DUFOUR, Solicitor.
SOUTHWESTERN SURETY INSURANCE CO.,
(Signed) By JOS. BAYLE,
[Seal] Atty. in Fact.

Approved.
(Signed) RUFUS E. FOSTER, Judge.

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55 DEMURRER TO JURISDICTION.

Filed January 10th, 1911.

United States District Court, Eastern District of Louisiana.

J. A. E. Pyle, Trustee,
vs. No. 14242.
Texas Transport & Terminal Company, et als.

Now comes Paul Chardin, made a defendant herein, and, appearing specially under protest for the purpose of demurring to the jurisdiction of this Court, and for no other purpose, says that the Court is without jurisdiction in this cause for the following reasons:

That it appears from the bill of complaint that this is a suit brought under Section 60, subdivisions a and b of the Bankruptcy Act of the United States, being the Act of Congress adopted July 1, 1898, and its amendments, to set aside the alleged voidable transfer to this defendant of the certain cotton described in the bill of complaint; that it further appears from said bill that this defendant, the transferee, is not a citizen or inhabitant or resident of his State or of the United States, but is a citizen, inhabitant and resident of the Republic

of France, and that he has not been personally cited or served with any process of Court in this cause; that it is not shown by the said bill that any of his co-defendants has any authority to stand in judgment for this defendant; that the bill fails to state a case within the jurisdiction of this Court to give the relief, either interlocutory or final, prayed for by complainant.

Wherefore, defendant prays that his demurrer be sustained and this cause dismissed, with reservation of this defendant's rights to recover his costs and all damages sustained from the injunctive order heretofore rendered in this cause.

(Signed) DENEGRE & BLAIR,
Solrs. for Above Named Defendant.

56 J. P. Blair, being duly sworn, deposes and says that he is of counsel for the said Paul Chardin, who is absent from the State and unrepresented save by his said counsel and solicitors of record; that the foregoing demurrer was not filed for purposes of delay; and affiant further states and certifies that in his opinion said demurrer is good in point of law.

(Signed) J. P. BLAIR.

Sworn to and subscribed before me, this 10th day of January, 1911.

(Signed) HENRY H. CHAFFE,
[Seal] Notary Public.

57 HEARING AND ORDER—DEMURRER OVERRULED.

Extract From the Minutes, November Term, 1910.

New Orleans, Friday, January 13th, 1911.

Court met pursuant to adjournment.

Present: Hon. Rufus E. Foster, Judge.

J. A. E. Pyle, Trustee,
vs. No. 14,242.
Texas Transport and Terminal Company, et al.

The demurrer filed by Paul Chardin, a defendant herein, set for hearing this day, was called.

Present: Messrs. Dufour & Dufour, Solicitors for Complainant.

Present: Messrs. Denegre & Blair, Solicitors for Paul Chardin, Defendant.

Whereupon, after hearing the solicitors for the respective parties, it is ordered that the said demurrer be, and it is hereby overruled.

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58 ANSWER OF PAUL CHARDIN.

Filed February 6th, 1911.

United States District Court, Eastern District of Louisiana.

J. A. E. Pyle, Trustee,
vs. No. 14,242.
Texas Transport and Terminal Company, et als.

Answer of Paul Chardin.

Now comes Paul Chardin, made one of the defendants herein, and, not waiving but reserving the benefits of his demurrer heretofore filed to the jurisdiction of this Court and not con-

senting to but protesting against the exercise of jurisdiction in this cause, this defendant, now and at all times saving to himself any and all manner of benefit or advantage of exception or otherwise that can or may be had or taken to the many errors, uncertainties and imperfections in the said bill contained, for answer thereto, or to so much thereof as this defendant is advised it is material or necessary for him to make answer to, answering says:

1. He admits and avers that this defendant is and was at all times hereinafter set forth, and for some time prior thereto, a citizen and resident of the Republic of France, engaged in the banking business at Paris and at the same time in the commercial business at Havre of buying and selling cotton.

2. He says that, for want of sufficient information, he can neither admit nor deny the allegations contained in paragraphs "Second" and "Third" of the complaint, in respect to the domicile, membership and business of the firm of Steele, Miller and Company, the institution of proceedings of involuntary bankruptcy against said firm, the adjudication of bankruptcy, the appointment of complainant as receiver and his subsequent election as trustee in bankruptcy, and he leaves complainant to his proof thereof.

3. He denies the statement contained in paragraph "Fourth" of the complaint that on or prior to April 15, 1910, the relations between Steele, Miller and Company and this defendant were those of debtor and creditor, Steele,
59 Miller and Company being indebted to him in the sum of $72,557.12 in United States currency; he avers that he extended no credit and made no loan of money to Steele, Miller and Company, and that the obligation of Steele, Miller and Company on the date above named and prior thereto was not to pay this defendant a sum of money, but to deliver or cause to be delivered to him one thousand bales of cotton which this defendant had already paid for as will hereafter be more fully set forth.

He avers that he is not familiar with the fraudulent practices of Steele, Miller and Company and is unable to affirm or deny the correctness of the statements in respect thereto found

in paragraph "Fourth" of the complaint, and leaves complainant to his proof thereof.

He admits and avers that sales and purchases of cotton are usually made and effected by the drawing and acceptance of drafts with bills of lading covering the cotton attached thereto; he avers that such drafts are accepted and paid under the belief that the title to and possession of the cotton so sold and purchased are vested in the acceptor by such acceptance and the delivery of the bill of lading.

4. He admits that the statements contained in paragraph "Fifth" of the complaint and Exhibit A thereof are substantially correct. He avers that each of said drafts represented the purchase price of a lot of 100 bales of cotton and an identifying description of said cotton by lot numbers and marks was set forth on the face of the draft, the same corresponding with the description in the bill of lading attached thereto. He denies that said drafts were accepted and paid by him for the purpose of "buying the bills of lading thereto attached" as charged in said paragraph "Fifth," and avers that the same were accepted and paid for the purpose of buying the cotton described in the drafts as well as in the bills of lading and for the purpose of obtaining the bills of lading which he believed represented the cotton and the possession of which he believed gave him the title to and full dominion over the cotton; that he believed at the time that the bills of lading were genuine and that the cotton described therein and in the drafts had been actually shipped at or about the dates of said drafts, but that, from information received subsequently to May 7, 1910, and chiefly as a result of the investigations made in said bankruptcy proceedings, he now believes that said bills of lading were forgeries and that Steele, Miller and
60 Company thus fraudulently deceived this defendant into believing that at the time that he paid for the cotton by acceptance of the drafts, he was receiving symbolically title to and possession of the cotton. He denies that he thus became a creditor of Steele, Miller and Company in a sum representing the amount of said drafts; he avers, on the contrary, he became entitled to demand and receive from Steele, Miller and Company the one thousand bales of cotton which had been paid for by said drafts and Steele, Miller and Company were legally bound to make good their default by

securing, marking, forwarding and delivering to this defendant the cotton covered by said drafts and purporting to be covered by said spurious bills of lading.

5. He admits that the statements contained in paragraph "Sixth" of the complaint in respect to the business of Scheuch and Company are substantially correct, except the statement that the one thousand bales of cotton referred to in the complaint were sold to Scheuch and Company. He believes, and so avers, that the legal and intended effect of the transactions in respect to the said cotton was a transfer of the title and of full dominion over the same to this defendant, who was the party that paid the seller the purchase price and who was the purchaser thereof; that it is not material, however, for the purpose of this suit whether the ultimate purchaser was this defendant or Scheuch and Company, since in any event Steele, Miller and Company agreed and bound itself to sell and deliver the said cotton, received the price thereof, and, by subsequently shipping the cotton in question, simply carried out its aforesaid original obligations, and completely divested itself of the ownership and possession of said property.

For want of sufficient information he neither admits nor denies the statements in said paragraph "Sixth" in respect to the insolvency of Steele, Miller and Company prior to April 1, 1910, and the issuance and negotiation by it of drafts with spurious bills of lading attached thereto to other persons in various parts of the world in an amount approximating 3,000,000 of dollars, and leaves complainant to his proof thereof.

He especially denies that he knew of or had any rea-
61 sonable ground for suspecting said insolvency or said fraudulent practices.

6. He admits that it is substantially correct, as stated in paragraph "Seventh" of the complaint, that on or prior to April 6, 1910, Steele, Miller and Company had collected or had its possession 1000 bales of cotton marked as stated in the complaint, which marks correspond with the marks of the cotton on the said drafts and the bills of lading attached thereto, and that said cotton was then shipped by Steele, Miller and Company under inland bills of lading to the order of Steele, Miller and Company and that, when said cotton reached New Orleans, the said bills of lading were exchanged for ocean

bills of lading, one dated April 19, two April 20th, six April 21st and one dated April 23, 1910, which two sets of bills of lading in respect to the marks of the cotton covered thereby, the dates, etc., are described with substantial correctness in Exhibits B and C of the complaint; but this defendant asks leave to refer for greater certainty to said bills of lading or proven copies thereof which may be produced on the trial. He avers that there was a shortage of six bales, so that there was delivered to said ocean carrier only 994 bales of cotton, the lot of 100 bales marked R T P N being short two bales, and the lot of 100 bales marked R N O I being short four bales, so that the port bills of lading for said two lots cover only 98 and 96 bales respectively. He does not know and has no means of knowing how long prior to April 6, 1910, Steele, Miller and Company had acquired, assembled and marked said cotton.

He avers that the acquiring, assembling and marking of said cotton as aforesaid had for its intended and legal effect to appropriate said cotton to the obligations of Steele, Miller and Company under the said original transaction with this defendant, whereby he purchased and paid for said cotton and became entitled thereto; that the further legal and intended effect of said acts of Steele, Miller and Company was to give to this defendant the same right, title and interest in and to said cotton as he would have had if said cotton had been originally shipped under the original bills of lading attached to the drafts as aforesaid.

He avers that he did not know and had no reason to believe or suspect, until the fraudulent practices of Steele, Miller and Company were disclosed to him through the said
62 bankruptcy proceedings some time subsequent to May 7, 1910, that said cotton had not been shipped contemporanenously with the drawing of said drafts; and, accordingly, he avers that the subsequent acts of Steele, Miller and Company to make good its default, perform its obligations, and deliver to this defendant the cotton he had bought and paid for and was entitled to receive, were done and accomplished without his procurement or knowledge.

7. He again denies that on or about April 15, 1910, this defendant and Scheuch and Company, or either of them, were ordinary, unsecured creditors of Steele, Miller and Company

in the sum of $72,557.12, represented by the said drafts with the forged bills of lading attached, and again avers that the obligation of Steele, Miller and Company was to deliver 1000 bales of cotton, not to pay a certain sum of money. He admits and avers that on or about the date of their issuance Steele, Miller and Company deposited in the United States mail said ocean or port bills of lading representing said 994 bales of cotton, addressed to Scheuch and Company. He avers that said bills of lading were negotiable in form, to the order of Steele, Miller and Company and by it indorsed in blank, and represented said cotton; that said bills of lading were mailed to Scheuch and Company for this defendant and that the deposit of said bills of lading in the mail operated at once a transfer of the title to and possession of said cotton to this defendant; that the acts of Steele, Miller and Company in obtaining and forwarding said port bills of lading was in furtherance of said acts of appropriation and a performance and consummation of their original obligation in the premises. He avers that said port bills of lading were delivered into his physical possession by Scheuch and Company, seven covering the cotton marked R N O I, R M B E, R N A M, R T H F, R D G B, R B X K, and R M U I on May 3rd, and the remaining three on May 7th and he has ever since had possession or control thereof as well as of the bills of lading attached to said drafts.

He denies that the forwarding to him by Steele, Miller and Company of said port bills of lading was done with the intent to prefer him or Scheuch and Company, or either of them, over the other creditors of Steele, Miller and Company. He denies that when said bills of lading were mailed to Scheuch and Company for this defendant or when the same
63 were received and delivered to this defendant, he knew or ought to have known or had reasonable cause to believe that a preference was thereby given and intended; or knew or had reasonable cause to believe that Steele, Miller and Company was insolvent. He denies that the performance by Steele, Miller and Company, as aforesaid, of its obligation to deliver the cotton which it had agreed to deliver and which it had been paid for constituted any preference within the meaning of the bankruptcy act. He denies that it constituted any voidable preference in favor of this defendant for the additional reason that he was unaware at the time

of the acts of Steele, Miller and Company now charged to constitute a preferential transfer and because he believed and had reasonable cause to believe at the time that the cotton, the transfer of which to him is now sought to be avoided, was cotton shipped at the time of the drawing of the said drafts, had been fully paid for by him, belonged to him, and that he was justly and exclusively entitled thereto.

For want of sufficient information he neither affirms nor denies the statements contained in said paragraph "Eighth" in respect to the insolvency of Steele, Miller and Company and leaves complainant to his proof thereof. He denies that he knew or should have known at the time of the transfer to him of said cotton that Steele, Miller and Company was insolvent. He avers that even knowledge of such insolvency would not have given him reasonable cause to believe that he was being given a preference because, as he again states, he was unaware of the original default and subsequent acts done to make good the default and because, had he known thereof, he would still reasonably have believed that he was justly entitled to the cotton he had bought and paid for, whether Steele, Miller and Company was solvent or not at the time of the shipment thereof.

8. He admits that the statements contained in paragraph "Ninth" of the complaint are substantially correct, but he asks leave to refer to the proceedings in said cause No. 14,219 of Pyle vs. Philip Landgren for greater certainty as to the location of the cotton as the date of the institution of said cause and as to its subsequent disposition.

9. Further answering, this defendant says that for more than three years past Steele, Miller and Company had been engaged in the business, among other thing, of selling cotton to or through Scheuch and Company, a commercial firm which is now and was at all times hereafter set forth and for some time prior thereto, domiciled and engaged at Havre, France, in the business of buying, selling and importing cotton; that, according to the regular course of business, cotton, the sale of which had been negotiated would be shipped by Steele, Miller and Company under through bills of lading to shipper's order, notify Scheuch and Company, each of which bills of lading, being for one hundred

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bales, indorsed in blank by shippers, would be forwarded to Havre attached to a draft for the full price of the cotton covered thereby (less freight, insurance and six per cent. loss in weight) drawn by Steele, Miller and Company on some bank in Havre which had agreed to take and pay for the said cotton, the cotton being described in the draft, as well as in the bill of lading, by number of bales and marks, which is the customary method of describing and identifying lots of cotton intended to be sold; that said documents would be presented to the drawee bank in France by some third person for Steele, Miller and Company, and it was the intended and legal effect of the acts and doings of the parties in the premises that, on the acceptance of any such drafts (the same being sixty or ninety days drafts) title to the cotton, described as aforesaid in the draft and in the bill of lading, should thereupon become vested in the person obligating himself by such acceptance to pay the price thereof, and the indorsed bill of lading was surrendered at the time to the acceptor of the draft as one of the means of transferring title and possession and as evidence thereof and to enable the holder to obtain possession of the cotton from the carrier on arrival at Havre. That during the period aforesaid of upwards of three years many thousands of bales of cotton were so shipped and disposed of by Steele, Miller and Company, and paid for and possession thereof secured by through bills of lading and drafts as aforesaid, there being always attached to the bill of lading a certificate of insurance and an invoice showing correspondence of the amount of the draft with the price of the cotton.

That on or about January 27, 1910, this defendant having need for one thousand bales of cotton arranged for the purchase thereof from Steele, Miller and Company, the
65 same to be shipped to Havre, and paid for in the manner above indicated, and drafts representing the purchase price to be drawn on this defendant at his Paris banking house. That pursuant to said arrangement Steele, Miller and Company, on January 27, 1910, drew on this defendant ten certain drafts, each dated at Corinth, Mississippi, to drawers' order and by them indorsed in black, payable sixty days after sight:

One numbered 2135 for 38,201.70 francs, and reciting that

it was drawn against one hunred bales of cotton marked R M U I 1/100.

One numbered 2131 for 38,281.20 francs, and reciting that it was drawn against one hundred bales of cotton marked R T H F 1/100.

One numbered 2138 for 38,325.70 francs, and reciting that it was drawn against one hundred bales of cotton marked R B X K 1/100.

One numbered 2137 for 37,439.40 francs, and reciting that it was drawn against one hundred bales of cotton marked R D G B 1/100.

One numbered 2132 for 37,440.20 francs, and reciting that it was drawn against one hundred bales of cotton marked R N A M 1/100.

One numbered 2133 for 37,681.85 francs, and reciting that it was drawn against one hundred bales of cotton marked R M B E 1/100.

One numbered 2130 for 37,518.00 francs, and reciting that it was drawn against one hundred bales of cotton marked R I N O 1/100.

One numbered 2136 for 37,678.65 francs, and reciting that it was drawn against one hundred bales of cotton marked R S O U 1/100.

One numbered 2139 for 38,258.15 francs, and reciting that it was drawn against one hundred bales of cotton marked R T P N 1/100.

One numbered 2134 for 37,197.75 francs, and reciting that it was drawn against one hundred bales of cotton marked R N O I 1/100.

That the first of the above described drafts was presented to this defendant at Paris for acceptance and was by him accepted on February 12, 1910, and was thereafter when it became due paid in full by him; that there was attached to said draft when presented for acceptance what purported to be a through bill of lading of the Mobile and Ohio Railroad Company, dated at Columbus, Mississippi, January 26, 1910, certifying to the receipt at Columbus, Mississippi, from Steele, Miller and Company of one hundred bales of compressed cotton marked R M U I 1/100, consigned to shippers' order, notify Scheuch and Company, Havre, France, and undertaking on behalf of said railroad company and its connections to transport the said cotton to the Port of

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New Orleans, and thence by steamship of "French Line" to Havre, France, which bill of lading was in all respects perfectly regular and on the printed form of said railroad company and certified to by W. E. Kennedy, as agent and on behalf of carriers severally, but not jointly; that also attached to said draft was the usual form of insurance certificate and an invoice showing correspondence between the amount of the draft and the price to be paid for the said one hundred bales of cotton.

That each of the other nine drafts was likewise presented to this defendant and accepted by him, some on the 11th and some on the 12th day of February, 1910, and paid by him when due; that to each were attached similar bills of lading, insurance certificates and invoices, the bills of lading for each lot of 100 bales being dated and issued as follows: One dated January 25, 1910, issued by the Southern Railway Company in Mississippi at Winona, Mississippi, covering the cotton marked R T H F; one dated January 26, 1910, issued by the Mobile and Ohio Railroad Company at West Point, Mississippi, covering the cotton marked R B X K; one dated January 26, 1910, issued by the Southern Railway Company in Mississippi at Columbus, Mississippi, covering the cotton marked R D G B; one dated January 25, 1910, issued by the Southern Railway Company in Mississippi at Winona, Mississippi, covering the cotton marked R N A M; one dated January 24, 1910, issued by the Mobile and Ohio Railroad Company at Tupelo, Mississippi, covering the cotton marked R M B E; one dated January 24, 1910, issued by the Illinois Central Railroad Company at Winona, Mississippi, covering the cotton marked R I N O; one dated January 25, 1910, issued by the Southern Railway Company in Mississippi, at Columbus, Mississippi, covering the cotton marked R S O U; one dated January 25, 1910, issued by the Mobile and Ohio Railroad Company at West Point, Mississippi, covering the cotton marked R T P N; and one dated January 25, 1910, issued by the Illinois Central Railroad Company at Jackson, Mississippi, covering the cotton marked R N O I. That on the acceptance of each of said drafts there were surrendered to this defendant the attached bills of lading, certificate of insurance and invoice.

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That, believing and relying upon the representations conveyed and the obligations imposed by the drawing and for-

warding of said drafts, with the documents attached, and believing that said cotton had actually been shipped and that acceptance of said drafts, was well as the possession and ownership of the bills of lading (obtained through such acceptance) would transfer to him the title to said cotton and the right to receive the same on its arrival, this defendant accepted said drafts (which he subsequently paid) and accepted the transfer and delivery of the bills of lading, with the attached certificate of insurance and invoices, all of which documents are still in his possession.

That no part of said cotton has ever come into the hands of this defendant except through the constructive delivery and possession effected by his holding and ownership of the bills of lading representing the same as herein set forth; that while he was awaiting the arrival of said cotton he received by mail from Steele, Miller and Company, through Scheuch and Company on May 3rd and 7th, 1910, the ten bills of lading issued as aforesaid by the Compagnie Generale Transatlantique acknowledging the receipt from Steele, Miller and Company of the said ten losts [lots] of one hundred bales each, with the said identifying marks, for shipment to Havre and delivery there to shippers' order, notifying Scheuch and Company, which bills of lading were indorsed in blank by Steele, Miller and Company, forwarded at or about the dates of their issuance, and have ever since been, and now are, in the possession of this defendant. That the next news this defendant received concerning the said cotton was the cable report of the aforesaid proceedings instituted on May 7th, 1910, which resulted in the injunction restraining the master of the steamship "Texas" and its aforesaid owner and agent from removing said nine hundred bales and other cotton out of the jurisdiction of this Court, on the ground that the shipment of said cotton by Steele, Miller and Company constituted the giving or attempt to give a preference or an attempt to hinder and delay their creditors in violation of the bankruptcy laws of the United States; and this defendant learned from the
68 report of said proceedings for the first time that it was alleged or charged that the original through bills of lading attached to the drafts paid by him were forgeries and he then for the first time had reasonable cause to believe that the said one thousand bales of cotton which he had paid for as aforesaid had not been shipped on the dates he had until

then believed the same to have been shipped, namely, on the dates of said original through bills of lading. This defendant accordingly avers that, if it be true that said bills of lading attached to said drafts were forged and spurious, and if Steele, Miller and Company did not deliver the cotton described therein to the said railroad companies at the dates of said bills of lading, but at a subsequent date, this defendant was in entire ignorance thereof, and never knew and had no reasonable cause to believe, that he had been the victim of any such fraud until after the proceedings in this Court against Steele, Miller and Company had been instituted between May 7th and 13th, 1910, and brought to his attention; that until such proceedings he rested secure in the belief that the cotton he had bought and paid for was on its way to Havre and would be delivered to him on surrender of said through bills of lading.

That subsequent investigation, in the light of the disclosures evoked by the bankruptcy proceedings of Steele, Miller and Company, has led this defendant to believe that the said one thousand bales of cotton were not delivered to the said railroad companies at the dates of said through bills of lading; and he avers that Steele, Miller and Company either had said cotton in its possession at the time or subsequently acquired the same for the purpose of delivering it to this defendant; and that at some time prior to April 6, 1910, Steele, Miller and Company marked said cotton, each lot of one hundred bales, to correspond with said drafts and attached documents, for the purpose and with the effect of appropriating the same to said drafts and the rights of this defendant in the premises; and in further appropriation of said cotton and in further performance of their obligation to deliver the same to this defendant, from whom they had received full payment therefor, Steele, Miller and Company, as this defendant is informed and believes, delivered each of said 100 bale lots of cotton so marked to the said various railroad companies for transportation to the port of New Orleans, and thence by steamship of the "French Line" for transportation to Havre and delivery to this defendant.

69

That said cotton reached the port of New Orleans on various dates prior to April 25, 1910; that Steele, Miller and Company, then acting through their local agent or representative, delivered up the railroad bills of lading under which the cotton had been brought to New Orleans and received in exchange

therefor the said bills of lading issued by the Compagnie General Transatlantique as aforesaid and transmitted the same to this defendant; that the actual and intended effect of the aforesaid acts and doings of Steele, Miller and Company was to deliver to this defendant the said one thousand bales of cotton (less six bales as aforesaid) to the delivery of which he was entitled and the purchase price of which he had fully paid, as long ago as January, 1910.

That the fact that the original through bills of lading were forged or spurious did not destroy, or essentially alter the nature of, the rights and obligations of the parties; that Steele, Miller and Company became bound, if they did not have the cotton, to acquire the same and deliver it to this defendant, and this defendant became entitled to said cotton as soon as acquired and appropriated to the obligation arising out of the aforesaid transactions; that accordingly this defendant became entitled to said 1000 bales of cotton as soon as Steele, Miller and Company made a definite and specific appropriation thereof in fulfillment of their aforesaid obligation, which was done as soon as that firm selected said one thousand bales of cotton and marked the same to correspond with said first set of railroad bills of lading and the drafts to which they were attached, and certainly was such appropriation effected when it subsequently delivered said cotton so marked to the carrier for transportation to New Orleans and thence to Havre, for the purpose of being delivered to this defendant, by whom the cotton had already been fully paid for as aforesaid; and the delivery and transfer of said cotton to this defendant was consummated and perfected by the delivery of the same to the ocean carrier and the forwarding of said ocean bills of lading therefor to this defendant.

That, prior to the institution of the said cause No.
70 14,219, and prior to any bankruptcy proceedings anywhere against Steele, Miller and Company, said firm had received payment in full for said cotton and had completely divested itself of the title, ownership and possession of said cotton, and the same had been completely vested, as aforesaid, in this defendant, that at the time when this defendant acquired his right or title to said cotton he did not know and had no reasonable ground for believing that a preference was being given or intended by the transfer to him of such right

and title; that accordingly its right and title to said cotton is superior to that of the complainant trustee.

10. He avers that he has fully set forth the facts constituting the transactions between him and Steele, Miller and Company and that he has a right to ask this Honorable Court, as he now does, to define, recognize and enforce his rights in, to or in respect to said cotton; that whether he has the full and complete title thereto, as he is advised and so claims, or whether he has a qualified ownership or special property therein, or an equitable lien or charge or a right in the nature of a pledge, his rights or title to said cotton were not created by any voidable or preferential transfer, are superior to any rights or title of complainant, and entitle him to be awarded said cotton or its proceeds and to a dissolution of the restraining and injunctive orders heretofore issued in this cause, as well as in said cause No. 14,219.

11. He avers that by the procuring or issuing of said alleged spurious through railroad bills of lading for said cotton and forwarding the same to him with said drafts attached and accepting the proceeds of said drafts, Steele, Miller and Company warranted its title to said cotton and that the same had been delivered to the carrier for this defendant and is estopped to deny the same and is estopped to deny this defendant's right and title to the cotton after the same was selected, marked and appropriated as aforesaid, and this estoppal operates equally against the complainant trustee and the general creditors of Steele, Miller and Company and all other persons who are disputing this defendant's rights to said cotton.

12. This defendant respectfully submits that the restraining and injunctive orders issued in said cause No.
71 14,219 and in this cause were improvidently ordered; that this Court is and was without jurisdiction to render the same or to give complainant the relief he seeks; that at the time of the institution of the said cause No. 14,219 and of the present suit, the bankrupts, Steele, Miller and Company, had parted with both the ownership and the possession of the said one thousand bales that neither the receiver nor the trustee in bankruptcy has or had any right to proceed in rem against said property; that his only remedy was and is a

personal suit against the creditors alleged to have received the prohibited preference, and this Court has not, and never had, any jurisdiction in personam over this defendant; that the appearance which this defendant has been compelled to make under protest to protect his property as aforesaid should not be construed and cannot be construed as a voluntary appearance giving this Court full jurisdiction over him.

This defendant further admits that should this Court maintain its jurisdiction to decide upon the merits the issues presented herein, then this defendant is entitled to be awarded the said cotton or its proceeds.

This defendant specially reserves all his rights and claims against the owners and agents of said steamship "Texas," and against said vessel, which it may have in the premises, and especially as the holder and owner of said ten custody bills of lading.

Wherefore this defendant prays that the said bill of complaint be dismissed for want of jurisdiction in this Court to grant the relief prayed for, the restraining orders and injunction heretofore issued being dissolved, and a reference ordered to ascertain the damages this defendant has sustained by reason of said injunctive orders and his right to recover the same reserved.

And in the alternative, if his objections to the jurisdiction be overruled, this defendant prays that complainant's demands be rejected and that this defendant be decreed to be entitled to the within described one thousand bales of cotton and that the same be ordered to be delivered to him or be permitted to be transported by a steamship of the said Compagnie Generale Transatlantique to Havre under and in accordance with the said bills of lading issued by said company. And, likewise, in the alternative, this defendant prays that if this Court rejects his claim to the ownership and possession of said cotton,
72 then that the Court will recognize and enforce such special property or equitable lien or charge or other right in or to said cotton or its proceeds to which this defendant is entitled in the premises and which to the Court shall seem meet and just, and for such other and general relief as may be just and equitable.

(Signed) DENEGRE & BLAIR,
Solicitors for Defendant, Paul Chardin.

73 RULE TO RELEASE COTTON ON BOND, ETC.

Filed February 6, 1911.

United States District Court, Eastern District of Louisiana, New Orleans Division.

J. A. E. Pyle, Trustee,

vs. No. 14,242.

Texas Transport and Terminal Company, et als.

On motion of Denegre and Blair, solicitors for Paul Chardin, a defendant herein, still appearing as heretofore under protest and reserving the benefit of his demurrer to the jurisdiction of this Court, and, on suggesting to the Court that said defendant desires to release the cotton referred to in the complainant's bill from the operation of the injunctive orders herein rendered by substituting a bond therefor so that said cotton may be free from any claims of any of the parties to this cause and from any costs or charges growing out of this cause, it is ordered that the complainant and defendants, the Texas Transport and Terminal Company and the Compagnie Generale Transatlantique show cause on Friday, February 10, 1911, at 11 A. M. why said cotton should not be released and delivered to said defendant or the Compagnie Generale Transatlantique for transportation to Havre and delivery to this defendant or the holder of the bills of lading of said Compagnie Generale Transatlantique issued therefor, free from all claims of the parties hereto whether for the cotton or for any costs, expenses or damages incurred or sustained in consequence of this litigation, on this defendant furnishing a bond in favor of complainant, with surety approved by the Court, for the value of said cotton, conditioned upon this defendant producing the said cotton or so much thereof as this Court in this cause may decree the said trustee complainant to be entitled to or paying to said trustee complainant the value of said cotton or of the part thereof to which he may be decreed to be entitled by this Court in this cause, the value to be the value at the time of the release as shown by the amount of the bond; the bond to take the place of the cotton and the giving of the bond to be

otherwise without prejudice to the status, rights or
74 obligations of any of the parties to this cause.
(Signed) GEO. H. TERRIBERRY, Atty.
Feb. 6th, 1911.
Service accepted.
(Signed) WM. C. DUFOUR.

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75 ORDER CONTINUING MOTION TO SELL COTTON INDEFINITELY.

Extract From the Minutes, November Term, 1910.

New Orleans, Monday, February 6th, 1911.
Court met pursuant to adjournment.
Present: Hon. Rufus E. Foster, Judge.

J. A. E. Pyle, Trustee,
vs. No. 14,242.
Texas Transport & Terminal Company, et al.

The motion of complainant to sell the cotton enjoined herein, set for hearing this day, was called.

Present: Messrs. Dufour & Dufour, Solicitors for Complainant, Mover.
Present: George H. Terriberry, Esq., Solicitor for Texas Transport & Terminal Co., et als., Defendants.
Present: Messrs. Denegre & Blair, Solicitors for Paul Chardin, Defendant.

Whereupon, after hearing the parties, it is ordered that the said motion be continued indefinitely.

76 ORDER FOR DELIVERY OF COTTON ON BOND.

Filed February 10, 1911.

United States District Court, Eastern District of Louisiana, New Orleans Division.

J. A. E. Pyle, Trustee,

vs. No. 14,242.

Texas Transport and Terminal Company, et als.

The rule taken by Paul Chardin, a defendant herein, for leave to release the cotton referred to in complainant's bill from the operation of the injunctive orders herein entered by substituting a bond therefor came on this day to be heard and was argued by counsel, the plaintiff in rule, Paul Chardin, being represented by Denegre and Blair, his solicitors of record, the complainant, J. A. E. Pyle, trustee, by Dufour and Dufour, his solicitors of record, and defendants, the Texas Transport and Terminal Company and the Compagnie Generale Transatlantique, by George H. Terriberry, their solicitor of record; and the Court being fully advised in the premises, it is ordered that the one thousand bales of cotton (less a shortage of six bales) referred to in the complaint herein and hereafter more particularly described shall be released from the operation of the injunction or restraining orders herein issued or heretofore issued by this Court on the said Paul Charden furnishing a bond in favor of the complainant trustee, with surety approved by the Court, for the value of said cotton, conditioned upon Paul Chardin producing the said cotton or so much thereof as this Court in this cause may decree the said complainant trustee to be entitled to or paying to the said complainant trustee the value of said cotton or the part thereof to which he may be decreed to be entitled by this Court in this cause, the value to be the value at the time of the release as shown by the amount of the bond, the cotton covered by this order being numbered and marked as follows:

R M U I 1/100; R T H F 1/100; R N A M 1/100; R D G B 1/100; R B X K 1/100; R N O I 1/96; R I N O 1/100; R M B E 1/100; R S O U 1/100; R T P N 1/98.

77 It is further ordered that on said bond being furnished the cotton shall be released and discharged

from all claims of any party to this cause and especially from all claims for any costs, expenses or damages growing out of this litigation or any injunctive orders of this Court, the bond to take the place of the cotton and the giving of the bond to be otherwise without prejudice to the status, rights or obligations of any of the parties to this cause.

It is further ordered that the aggregate value of said one thousand bales of cotton (less a shortage of six bales) is hereby fixed at seventy-four thousand, seven hundred and forty dollars (74,740.00), all parties consenting to said valuation, and the amount of the bond herein authorized is fixed at said sum of $74,740.00. It is further ordered that when the bond herein provided for shall have been furnished, the cotton so released shall be free from all costs, charges and expenses, including expenses of insurance, drayage and storage, and said expense of insurance, drayage and storage if not previously paid by the trustee as herein provided, shall be taxed as costs in this suit and shall be recoverable under the bonds heretofore given by the trustee. It is further ordered that the trustee apply forthwith to the Honorable H. C. Niles, United States Judge for the Northern District of Mississippi for authority to pay the Compagnie Generale Transatlantique the said storage charges and insurance premiums which the Compagnie Generale Transatlantique has either paid out or become liable for in preserving the said cotton, and when said trustee is so authorized he shall have the right to apply to the Court for a proportionate reduction of the several bonds heretofore furnished by him to the extent of said cash payment.

It is further ordered that on defendant, Paul Chardin, filing with the clerk of this court a bond of the character and amount above provided for, and which has been approved by this Court or a Judge thereof, all injunctive orders of this Court in respect to said cotton shall be released and dissolved, and the clerk of this Court is directed then to so notify the defendants, the Compagnie Generale Transatlantique and
78 the Texas Transport and Terminal Company.

(Signed) RUFUS E. FOSTER, Judge.

O. K.
(Sgd.) J. P. B.
(Sgd.) G. H. T.
(Sgd.) W. C. D.
Feb. 10/11.

79 RELEASE BOND OF PAUL CHARDIN.

Filed February 15th, 1911.

United States District Court, Eastern District of Louisiana.

J. A. E. Pyle, Trustee,
vs. No. 14,242.
Texas Transport & Terminal Company, et als.

Know all men by these presents, that we, Paul Chardin, as principal obligor, and the American Surety Company of New York, as surety, are held and firmly bound, jointly and severally, unto J. A. E. Pyle, trustee in bankruptcy for Steele Miller & Company, Bankrupts, in the sum of seventy-four thousand, seven hundred and forty dollars ($74,740.00) for the payment whereof well and truly to be made we bind ourselves, our heirs, executors, administrators and successors, jointly and severally firmly by these presents.

Signed and sealed this 14th day of February, A. D. 1911.

The condition of this obligation is such that, whereas, in a certain cause now pending in the United States District Court for the Eastern District of Louisiana, New Orleans Division, No. 14242 of the docket of said Court and entitled, "J. A. E. Pyle, Trustee, vs. Texas Transport & Terminal Company, et als.," the said Pyle made claim to nine hundred and ninety-four bales of cotton fully described in the pleadings in said cause, and obtained from said Court an order or injunction prohibiting the removal of said cotton from the jurisdiction of this Court; and

Whereas, on the tenth day of February, 1911, an order was rendered in said cause giving leave to the said Paul Chardin to release the said cotton from the operation of the said injunction by substituting a bond therefore:

Now, therefore, if the said United States District
80 Court in said cause shall decree that the said obligee, the trustee in bankruptcy, is entitled to said cotton or any part of it, and if the said Paul Chardin shall produce said cotton or the part thereof to which the obligee may be so decreed to be entitled, or pay to the obligee the value of said cotton, or of the part thereof to which the obligee may be so decreed to be entitled, the value to be the value at the time

of the release as shown by the amount of the bond, then this obligation shall be null and void; otherwise to be of full force and affect [effect].

PAUL CHARDIN,
(Signed) By J. P. BLAIR, Attorney in Fact.
AMERICAN SURETY COMPANY OF NEW YORK,
(Signed) By J. H. FULTON,
Resident Vice-President.

Attest.
(Signed) PETER F. PESCUD,
[Seal] Resident Assistant Secretary.
Approved.
(Signed) RUFUS E. FOSTER, Judge.
Approved.
(Signed) W. C. DUFOUR.

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81 REPLICATION TO ANSWER OF PAUL CHARDIN.

Filed March 6, 1911.

United States District Court, Eastern District of Louisiana.

J. A. E. Pyle, Trustee,
vs. No. 14,242.
Texas Transport & Terminal Company, et als.

The replication of J. A. E. Pyle, trustee, Steele, Miller & Company, to the answer of Paul Chardin:

This repliant, saving and reserving unto himself all and all manner of advantage of exception to the manifold insufficiencies of said answer, for replication thereunto saith:

That he will aver and prove his said bill to be true, certain and sufficient in the law to be answered unto, and that the said answer of the said defendant is uncertain, untrue and insufficient to be replied unto by this repliant; without this, that any other matter or thing whatsoever in the said answer con-

tained, material or effectual to be replied unto, confessed and avoided, traversed or denied, is true; all which matters and things this repliant is and will be ready to aver and prove as this Honorable Court shall direct and humbly prays as in and by his said bill he hath already prayed.

(Signed) W. A. PERCY,
DUFOUR & DUFOUR,
Solicitors.

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82 ANSWER OF TEXAS TRANSPORT & TERMINAL CO. AND COMPAGNIE GENERALE TRANSATLANTIQUE, AND CLAIM FOR DAMAGES.

Filed June 15th, 1911.

United States District Court, Eastern District of Louisiana.

J. A. E. Pyle, Trustee,
vs. No. 14,242. In Equity.
Texas Transport & Terminal Company, et als.

The joint and several answers of Texas Transport and Terminal Company and of Compagnie Generale Transatlantique:

Now comes Texas Transport & Terminal Company and Compagnie Generale Transatlantique, made defendants herein, and these defendants now and at all times saving to themselves any and all manner of benefit or advantage of exception or otherwise that can or may be had or taken to the many errors, uncertainties and imperfections in the said bill contained, for answer thereto, or to so much thereof as these defendants are advised it is material or necessary for them to make answer to, answering say:

1. They admit that the Compagnie Generale Transatlantique is a corporation created under the laws of the Republic of France, with its domicile in the City of Paris, France, and that Texas Transport & Terminal Company is a corporation organized under the laws of the State of New Jersey; that Compagnie Generale Transatlantique is a common carrier by

sea and operates a line of steamers between New Orleans, in Louisiana, and Bordeaux and Havre, in France.

2. They say that, for want of sufficient information, they can neither admit nor deny the allegations contained in the second, third, fourth, fifth and sixth paragraphs of the complaint, relative to the domicile, the business, and the various transactions of Steele, Miller & Company.

3. They say that they believe that the allegations of the seventh paragraph of the complaint are substantially true.

83 4. For want of sufficient information, they can neither deny nor admit the allegations in the eighth paragraph of the complaint, relative to the relations and transactions between Steele, Miller & Company and Scheuch & Company or between Steele, Miller & Company and Paul Chardin.

5. Answering the ninth paragraph of the complaint, they say that it is true that on the 7th day of May, 1910, there was on board the steamship "Texas," which said steamer belongs to defendant, Compagnie Generale Transatlantique, 2494 bales of cotton shipped by Steele, Miller & Company to Havre, shipper's order, notify Scheuch & Company, Havre; that, in the case of J. A. E. Pyle, Receiver, vs. Philip Landgren, Master, Steamship Texas, et als., No. 14,219 of the docket of the United States District Court for the Eastern District of Louisiana, these defendants were enjoined pendente lite from taking said cotton out of the jurisdiction of this Court. These defendants admit that they caused said cotton, at the expense of said Pyle, receiver, to be discharged from said steamer so that the steamer could proceed on her voyage as she was prepared, ready and doing [going] to do when restrained on May 7, 1910, and enjoined on May 9, 1910; they admit that they caused said cotton to be stored in the Kentucky Warehouse, at New Orleans, and they show that they caused said cotton to be insured for the benefit of whom it might concern while the said cotton was so stored.

6. They admit the truth of the allegations contained in the tenth paragraph of the complaint, relative to the refusal of

these defendants to deliver said cotton to any person other than the holder of the bills of lading covering same.

7. The defendant, the Compagnie Generale Transatlantique, is solely and only a common carrier by sea; it has no relation with said cotton except as a common carrier; that it has, as in duty bound and as by law required, obeyed all of the orders of this Honorable Court, in the various cases
84 of Pyle, Receiver, vs. Philip Landgren, Master, Steamship Texas, et als., No. 14,219 of the docket of this Court, and in the cases of Pyle, Trustee, vs. Texas Transport & Terminal Company, et als., numbered, respectively, 14,240, 14,241, 14,242, 14,243 and 14,277 of the docket of this Court; defendants show that the said injunctions remained in force and were obeyed by these defendants until they were, on the 15th day of February, 1911, notified by Frank H. Mortimer, Clerk of Court, that all injunctive orders in respect of said cotton were released and dissolved; that, thereupon, the Compagnie Generale Transatlantique carried said cotton forward by its first steamer, the Guatemala, and delivered the said cotton to the holders of its bills of lading in Havre, France, and took its said bills of lading on delivering said cotton, its bills of lading being thus accomplished and the responsibility and liability of the Compagnie Generale Transatlantique, and of its agents, the Texas Transport & Terminal Company, in respect of said cotton, being thereupon terminated.

Now, the defendant, the Compagnie Generale Transatlantique, shows that, in obeying the various orders of this Honorable Court, it sustained damages and incurred expenses, which in equity, law, and justice, the Court should require the complainant herein to pay to said defendant. That the damages so sustained by said Compagnie Generale Transatlantique, as a result of the aforesaid injunctive orders of this Court, are as follows:

(1) In dead freight on said 2494 bales of cotton, which cotton was delivered to, and placed on board of, the steamship Texas, and which said cotton was subsequently discharged, the said steamer proceeding on her voyage without said cargo and without any substitute therefor, the amount of said dead freight being $3310.53.

(2) In the cost of insurance of said 2494 bales of cotton while in the Kentucky Warehouse from May 10,
85 1910, to March 9, 1911, paid out in cash by said Compagnie Generale Transatlantique, which amounted to the sum of $2621.54.

(3) In costs of drayage of said cotton from steamer Texas to Kentucky Warehouse, the storage in said warehouse from May 12, 1910, to March 9, 1911, the drayage to the steamer Guatemala, and re-marking the said cotton, for all of which the said Compagnie Generale Transatlantique owes the said Kentucky Press and is bound to pay, amounting to the sum of $2682.55.

(4) In the cost of detention of the steamer Texas at New Orleans for nine days while her cargo was being discharged and reloaded so as to comply with the injunction of May 9, 1910, the sum of $1667.20.

(5) The difference between the current rate of freight, that is, thirty-seven (37) cents per one hundred pounds, applying when said cotton was carried forward to destination by the seamship Guatemala, on March 16, 1911, and the bill of lading rate, that is, twenty-six (26) cents per hundred pounds, on 2094 bales weighing 1,055,761 pounds, and twenty-eight (28) cents per hundred pounds on 400 bales weighing 201,943 pounds, at which rate this defendant was, under its said contracts, obligated to carry said cotton, the said difference amounting, in the aggregate on the 2494 bales, to the sum of $1343.08.

(6) The Compagnie Generale Transatlantic has had to employ an attorney-at-law for counsel throughout these matters and, also, to recover the damages aforesaid, and it prays the Court to allow it a reasonable sum as counsel fees.

The defendant, the Compagnie Generale Transatlantique, shows that, in equity, justice, and law, it should have a decree in its favor and against the complainant in full of all of said damages, with legal interest from the time said damages were sustained until paid.

Wherefore, these defendants pray that the said
86 bill of complaint be dismissed as against these defendants, and for costs; the defendant, the Com-

pagnie Generale Transatlantique, prays that there may be a decree in its favor and against the complainant for all the damages sustained, with legal interest thereon from the time said damages were sustained until paid, as fully set out in this answer; these defendants further pray for all such other and general relief as they may, in equity and law, be entitled to receive and the Court competent to grant.

(Signed) GEO. H. TERRIBERRY,
Solicitor for Defendants, Texas Transport & Terminal Company and Compagnie Generale Transatlantique.

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87 AMENDED ANSWER.

Filed August 29th, 1911.

In the District Court of the United States for the Eastern District of Louisiana.

J. A. E. Pyle, Trustee,
vs. No. 14,242. In Equity.
Texas Transport & Terminal Company, et al.

And now come Texas Transport & Terminal Company and Compagnie Generale Transatlantique, the defendants in the above cause, and leave of Court being first had, file the following amendment to the answer filed in this cause on the 15th day of June, A. D. 1911, to-wit:

After the conclusion of the seventh article of the answer add the following allegations:

"The defendant, the Compagnie Generale Transatlantique, further shows that, for the damages aforesaid, it has a lien and privilege on all of the 2494 bales of cotton which were on board its said steamer Texas, but that, as a bond was furnished by the defendant herein, Paul Chardin, equal to the value of the cotton covered by bills of lading held by him, the said bond to stand in the place and stead of the said cotton, and, as it was ordered by the Court, at the suggestion of all parties hereto,

that all claims against said cotton should be referred to said bond, the claim of said Compagnie Generale Transatlantique against said cotton and the lien and privilege in its favor on said cotton now holds and applies as against said bond so filed by the defendant herein, Paul Chardin, said bond standing in the place and stead of said cotton."

And amend the prayer of said answer so as to read as follows:

"Wherefore, these defendants pray that the said bill of complaint be dismissed as against them, and for costs; the defendant, the Compagnie Generale Transatlantique, prays that there may be a decree in its favor and against the complainant for all the damages sustained, with legal interest thereon from the time said damages were sustained until paid, as fully
88 set out in this answer; and, in the alternative, the defendant, the Compagnie Generale Transatlantique, prays that if this Court rejects its claim for damages, attorney's fees and interest against the complainant herein, then that the Court will grant and award such claim for all such damages, attorney's fees and interest against said cotton, or its proceeds, or the bond aforesaid standing in lieu thereof, with full recognition of its lien and privilege on said cotton or its proceeds or the bond which stands in lieu thereof, as this defendant may be entitled to have in the premises and which to the Court shall seem meet and just, and for such other and general relief as to the Court shall seem proper.

(Signed) GEO. H. TERRIBERRY,
Sol. for Texas Transport & Term. Co. and
Compagnie Gen. Transatlantique.

ORDER.

Let the foregoing amended answer be filed.

(Signed) RUFUS E. FOSTER,
United States Judge.

89 HEARING IN PART AND CONTINUANCE.

Extract From the Minutes, November Term, 1911.

New Orleans, Monday, November 20th, 1911.

Court met.

Present: Hon. Rufus E. Foster, Judge.

J. A. E. Pyle, Trustee,
vs. No. 14,242.
Texas Transport and Terminal Company, et als.

This cause came on to be heard this day upon the pleadings and proofs as specified in the notes of evidence offered in behalf of the respective parties.

Present: Messrs. Dufour & Dufour and W. A. Percy, Solicitors for Complainant.

Present: George H. Terriberry, Esq., Solicitors for Texas Transport & Terminal Co. and Compagnie Generale Transatlantique, Defendants.

Present: Messrs. Denegre & Blair, Solicitors for Paul Chardin, Defendant.

and was heard in part, and continued until Tuesday, November 21st, 1911, at ten o'clock A. M., for further argument.

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90 NOTE OF EVIDENCE OF COMPLAINANT.

Filed November 20th, 1911.

United States District Court, Eastern District of Louisiana.

J. A. Pyle, Trustee,
vs. No. 14,242.
Texas Transport & Terminal Company, et als.

Solicitors for complainant offer, produce, read and file in evidence in this case the following:

Stipulation of counsel as to the use in causes Nos. 14,240,

14,241, 14,242, 14,243 and 14,277 of the evidence taken and filed in any one of said causes.

Stipulation of counsel as to testimony of W. E. Kennedy.

The testimony of Edward S. Elliott.

The testimony of W. H. Hendren, together with the exhibits attached thereto, the first of said exhibits being attached to the record herein filed and marked "Complainant-26"; the second being Exhibit "No. 11," to-wit, cables offered in connection with the testimony of W. H. Hendren.

The testimony of Bernard Dessommes, together with exhibit, to-wit, copies of the Havre Bulletin of date April 27, 1910, and April 28, 1910, the said exhibit being attached to an affidavit of Wm. C. Dufour filed and used in connection with the proceeds for a preliminary injunction, and now made Exhibit "15."

The testimony of Henry E. Bory, together with the same exhibit offered in connection with the testimony of Bernard Dessommes.

The testimony of John H. Fulton, A. Breton, Jeff D. Hardin, Jr., together with the statement entitled "Loading Record," furnished by the said Jeff D. Hardin, Jr., which said exhibit is marked Exhibit "No. 10."

The testimony of C. H. G. Linde, together with Exhibit "1," being a letter from Scheuch & Company of date January 20, 1910; Exhibit "2," a letter from Scheuch & Company of date April 26, 1910; Exhibit "3," a letter from
91 Scheuch & Company of date March 22, 1910; Exhibit "4," a statement from Scheuch & Company of date April 2, 1910; Exhibit "5," a letter from Scheuch & Company of date April 1, 1910; Exhibit "6," cablegram to Scheuch & Company of date April 28, 1910; Exhibit "7," statement of drafts drawn by Steele, Miller & Company on Scheuch & Company and claimed by Linde to have been taken up April 29, 1910; Exhibit "8," a statement of Scheuch & Company of date April 29, 1910.

The testimony of Charles Janvier, Thomas Holford, together with extract from the Liverpool Daily Post & Mercury of April 22, 1910, attached to the affidavit of Wm. C. Dufour used in the proceedings on the application for a preliminary injunction, the said exhibit being marked "—."

The testimony of Edward S. Butler.

The testimony of Edward D. Nicholson.

All of said testimony being taken before Frank H. Mortimer, Special Examiner, at his office in the City of New Orleans, on the 7th, 9th, 15th, 16th and 22nd days of June, 1911.

A certified copy of the proceedings in the case of S. B. & E. Cohn, et al., vs. L. C. Steele, et al., No. 157 in equity of the docket of the United States Circuit Court for the Eastern Division of the Northern District of Mississippi, being Exhibit "14."

Certified copy of the proceedings in the matter of Knoop, Fabarius, et als., vs. Steele, Miller & Company, No. 123 in Bankruptcy in the District Court of the United States for the Eastern Division of the Northern District of Mississippi, particularly the petition for adjudication in involuntary bankruptcy, the certificate of the clerk showing the date of the filing thereof and the orders of the Court in the premises. The appointment of J. A. E. Pyle as temporary receiver and the bond of J. A. E. Pyle as temporary receiver. The order of reference to John W. Davis, referee in bankruptcy, the adjudication in bankruptcy by the said John W. Davis. The certificate of the said John W. Davis, referee in bankruptcy, showing the election of a trustee, the bond of said trustee, to-

92 gether with the certificate of the clerk of the District Court of the United States for the Northern District of Mississippi, showing that John W. Davis was at the time of the said proceedings the referee in bankruptcy of said Court and is now the referee of the said Court in bankruptcy; the same being Exhibit "No. 12" and Exhibit "No. 13."

Exhibits 2 to 53, inclusive, attached to the deposition of Adolph Riss, the same being the drafts, through bills of lading, invoices, insurance certificates and custody bills of lading called for during the examination of Mr. Linde.

Exhibit 1 attached to the deposition of Franz Lysell, called for as above.

Exhibits 1 to 34, inclusive, attached to the deposition of Elisee Paul Dubois, called for as above.

Exhibits 9 to 13, inclusive, attached to the deposition of Emile Level, called for as above.

Exhibits 2 to 7, inclusive, attached to the deposition of Jules Castel, called for as above.

Admission concerning testimony of J. A. E. Pyle, trustee.

Stipulation of counsel entitled in all the above causes where-

by all exhibits annexed to the foregoing depositions except those included in the above offer have, by agreement, been withdrawn because in the opinion of counsel they were irrelevant, cumulative or duplicates.

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93 United States District Court, Eastern District of Louisiana, New Orleans Division.

J. A. E. Pyle, Trustee,
versus No. 14,242.
Texas Transport & Terminal Company, et als.

Note: Evidence offered and filed on behalf of complainant, and referred to in his note of evidence, copied into the transcript of appeal in the case of J. A. E. Pyle, Trustee, vs. Texas Transport & Terminal Company, et als., No. 14,240 of the docket of the United States District Court, Eastern District of Louisiana, New Orleans Division, in accordance with the praecipe for the transcripts of appeal.

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94 NOTE OF EVIDENCE ON BEHALF OF PAUL CHARDIN.

Filed November 20th, 1911.

United States District Court, Eastern District of Louisiana, New Orleans Division.

J. A. E. Pyle, Trustee,
vs. No. 14,242.
Texas Transport and Terminal Company, et als.

Note of Evidence on Behalf of Paul Chardin.

The undersigned solicitors for the above named defendant offer, produce, read and file in evidence in this cause the following depositions, exhibits and stipulations:

1. Stipulation of counsel as to the use in causes Nos. 14,240, 14,241, 14,242, 14,243 and 14,277 of evidence taken and filed in any one of said causes.

2. The deposition of Ferdinand Scheuch, together with the following exhibits: Nos. 1, 2, 3, and 4, and 5, 12 and 13, as types of exhibits from 4 to 13. Nos. 14 and 18 as types of exhibits 14 to 18, and 18 bis. Exhibits 19 to 29 inclusive. Exhibits Nos. 30 and 46 as types of 30 to 46. Exhibits Nos. 47 and 90 as types of Exhibits 47 to 90. Exhibits 91 and 659 as types of exhibits from 91 to 659. Exhibits 660 to 671 inclusive.

3. Deposition of Albert Schilling.

4. Deposition of Adolph Riss, and the following exhibits annexed and referred to therein: Exhibits from 1 to 53 inclusive. Exhibits 59 and 60. Exhibits 122 to 125 inclusive.

5. The deposition of Franz Lysell, and the following exhibits annexed and referred to therein: Exhibits 1, 2, 3, 5, 6, 7, 13 and 14.

6. The deposition of Elisee Paul Dubois, and the following exhibits annexed and referred to therein: Exhibits 1 to 36 inclusive. Exhibits 58 to 62 inclusive.

7. The deposition of Emile Level and the following exhibits annexed and referred to therein: Exhibits
95 Nos. 3, 5, 6, and 9 to 13, inclusive.

8. The deposition of Jules Castel and the following exhibits annexed and referred to therein: Exhibits Nos. 2 to 7 inclusive. Exhibits Nos. 9 to 12 inclusive.

All of the above depositions having been taken under commission issued herein before John Preston Beecher, United States consul at Havre.

9. Stipulation of counsel entitled in all the above causes whereby all the exhibits annexed to the foregoing depositions except those included in the above offer have, by agreement,

been withdrawn because in the opinion of counsel they were irrelevant, cumulative or duplicates.

(Signed) DENEGRE & BLAIR,
Solicitors for Paul Chardin.

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96 United States District Court, Eastern District of Louisiana, New Orleans Division.

J. A. E. Pyle, Trustee,
versus No. 14,242.
Texas Transport & Terminal Company, et als.

Note: Evidence offered and filed on behalf of Paul Chardin, and referred to in his note of evidence, copied into the transcript of appeal in the case of J. A. E. Pyle, Trustee, vs. Texas Transport & Terminal Company, et als., No. 14,240 of the docket of the United States District Court, Eastern District of Louisiana, in accordance with the praecipe for the transcripts of appeal.

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97 RESMUED HEARING AND SUBMISSION.

Extract From the Minutes, November Term, 1911.

New Orleans, Tuesday, November 21st, 1911.
Court met pursuant to adjournment.
Present: Hon. Rufus E. Foster, Judge.

J. A. E. Pyle, Trustee,
vs. No. 14,242.
Texas Transport and Terminal Company, et als.

This cause, as continued from Monday, November 20th, 1911, for further hearing, was this day resumed.
Present: The solicitors for the respective parties,
and was argued and submitted, when the Court took time to consider.

98 DECREE.

Filed January 1st, 1912.

United States District Court, Eastern District of Louisiana.
In Equity.

J. A. E. Pyle
vs. No. 14242.
Paul Chardin, Compagnie Generale Transatlantique, Texas Transport and Terminal Company, and Scheuch and Company.

Decree.

This cause came on to be heard at this term and was argued by counsel and taken under advisement by the Court, and upon consideration thereof it is now ordered, adjudged and decreed as follows, viz.:

That complainant's bill be and it is hereby dismissed as to defendant Paul Chardin at costs of complainant, to be taxed; that the injunction pendente lite heretofore issued in this cause be and the same is hereby dissolved, and that Paul Chardin be and he is hereby declared to be the owner of the cotton referred to in the bill of complaint and covered by the bond herein given; and that the demands of the complainant against the said Paul Chardin be denied.

The Court hereby expressly reserves for further consideration all matters not herein expressly provided for, including th rights and claims of the Compagnie Generale Transatlantique against complainant and the rights and claims of all parties defendant, under the injunction bonds herein given, as well against the sureties on said bonds as against the complainant, and as to all such matters the bill is retained for further proceedings.

January 1st, 1912.

(Signed) RUFUS E. FOSTER, Judge.

99 PETITION AND ORDER FOR APPEAL.

Filed March 1st, 1912.

United States District Court, Eastern District of Louisiana.

J. A. E. Pyle, Trustee,
versus No. 14242.
Texas Transport & Terminal Company, et als.

The petition of J. A. E. Pyle, trustee, complainant in the above numbered and entitled cause, with respect represents:

That complainant considers himself aggrieved by the decree made and entered in this cause on the 1st day of January, 1912; and,

That he desires and hereby appeals from said decree to the United States Circuit Court of Appeals for the Fifth Circuit, and presents herewith, and makes part of this petition as Exhibit "A" hereto, assignments of error in said decree.

Wherefore, the premises considered, petitioner prays that his appeal may be allowed to operate as a supersedeas upon the giving of a bond with surety in an amount to be fixed by the Court and conditioned according to law, and that a transcript of the whole record, proceedings, testimony and papers upon which said decree was made, duly authenticated, be sent to the United States Circuit Court of Appeals for the Fifth Circuit in the manner and form and at the time prescribed by law and by the practice of said Court; that citation issue to Paul Chardin through his solicitors of record, Denegre and Blair; to Compagnie Generale Transatlantique through its agent, W. H. Hendren; to the Texas Transport & Terminal Company through its agent, W. H. Hendren, in the manner and form prescribed by law, for a correction of said errors and a reversal of said decree and for such other and further relief as may be proper in the premises.

(Signed) W. A. PERCY,
DUFOUR & DUFOUR,
Solicitors.

Service of above petition accepted 3/1/12.
(Signed) DENEGRE & BLAIR, Solrs.
(Signed) GEO. H. TERRIBERRY,
Sol. for Compagnie Generale Transatlantique and Texas Transport & Terminal Co.

77

100 ORDER.

Considering the foregoing petition, it is ordered that an appeal be allowed to the said complainant, returnable to the United States Circuit Court of Appeals for the Fifth Circuit, within thirty days from the date thereof, and that same operate as a supersedeas, upon the said complainant furnishing bond with a good and solvent surety, according to law, in the sum of two hundred dollars.

(Signed) RUFUS E. FOSTER, Judge.

Mar. 1/12.

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101 ASSIGNMENTS OF ERROR.

Filed March 1st, 1912.

United States District Court, Eastern District of Louisiana.

J. A. E. Pyle, Trustee,
versus No. 14242.
Texas Transport & Terminal Company, et als.

Assignments of Error.

Now comes J. A. E. Pyle, trustee in bankruptcy of Steele, Miller & Company, appellant, by his attorneys and says that, in the record and proceedings aforesaid, of the United States District Court for the Eastern District of Louisiana, in the above entitled cause and in the decree therein rendered on the 1st day of January, 1912, manifest error hath intervened to the prejudice of said appellant, in this, to-wit:

(1) The Court erred in rendering and entering a decree dismissing the bill of complaint of J. A. E. Pyle, trustee in bankruptcy of Steele, Miller & Company.

(2) The Court erred in rendering and entering a decree in favor of the defendant.

(3) The Court erred in holding that the Bank of Mul-

house was the owner of the cotton described in the bill of complaint and covered by the bond herein given.

(4) The Court erred in holding that, by delivering the actual cotton to the carriers, Steele, Miller & Company intended to appropriate, and did appropriate, said cotton to the fraudulent bills of lading theretofore acquired and held by the defendant, the Bank of Mulhouse.

(5) The Court erred in holding that the defendant was in fact a purchaser of actual cotton from Steele, Miller & Company.

(6) The Court erred in failing to find and hold that the defendant knew, or ought to have known, or had reasonable grounds to believe, that Steele, Miller & Company were insolvent at the time the defendant received the genuine
102 bills of lading representing cotton actually shipped, referred to in the bill of complaint.

(7) The Court erred in failing to find and to hold that Steele, Miller & Company, by delivering the genuine bills of lading to the defendant representing cotton actually shipped, thereby intended to prefer and did prefer said defendant to and over its other creditors and thereby intended to grant, and did grant, an illegal and unfair preference to the defendant, and that the defendant did receive a preference within the meaning and intendment of the bankrupt statute of the United States.

Wherefore, the said J. A. E. Pyle, trustee in bankruptcy of Steele, Miller & Company, appellant, prays that for the errors aforesaid and other errors appearing in the record in the above entitled cause to the prejudice of appellant, the said decree be reversed and annulled and that appellant be granted such relief as may be proper, and appellant shall ever so pray.

(Signed) W. A. PERCY,
DUFOUR & DUFOUR,
Solicitors.

103 BOND.

Filed March 1st, 1912.

United States District Court, Eastern District of Louisiana.

J. A. E. Pyle, Trustee,
versus No. 14242.
Texas Transport and Terminal Company, et als.

Know all men by these presents, that we, J. A. E. Pyle, trustee in bankruptcy of Steele, Miller & Company, as principal, and Southwestern Surety Insurance Company, of Oklahoma, as sureties, are held and firmly bound unto The Texas Transport & Terminal Company; Compagnie Generale Transatlantique; Paul Chardin in the full and just sum of two hundred dollars to be paid to the said Texas Transport & Terminal Company, Compagnie Generale Transatlantique, and Paul Chardin, certain attorney, executors, administrators or assigns, to which payment, well and truly to be made, we bind ourselves, our heirs, executors and administrators, jointly and severally, by these presents. Sealed with our seals and dated this 1st day of March, in the year of our Lord one thousand nine hundred and twelve.

Whereas, lately at a session of the United States District Court, holding sessions in and for the Eastern District of Louisiana, in a suit depending in said Court, between J. A. E. Pyle, trustee, and the Texas Transport & Terminal Company, et als,, number 14242 of the docket of said Court and a decree was rendered against the said J. A. E. Pyle, trustee, and the said J. A. E. Pyle, trustee, having obtained an appeal and filed a copy thereof in the clerks office of the said Court to reverse the decree in the aforesaid suit, and a citation directed to the said Texas Transport & Terminal Company, Compagnie Generale Transatlantique, Paul Chardin, citing and admonishing them to be and appear before the United States Circuit Court of Appeals for the Fifth Circuit, to be holden at New Orleans, Louisiana, within 30 days from the date thereof.

Now, the condition of the above obligation is such, that if the said J. A. E. Pyle, trustee, shall prosecute said appeal to effect, and answer all damages and costs if he fail

104 to make his plea good, then the above obligation to be void; else to remain in full force and virtue.

(Signed) J. A. E. PYLE, Trustee,
By WM. C. DUFOUR,
[Seal] His Solicitor & Attorney.

(Signed) SOUTHWESTERN SURETY INS. CO. OF OKLA.,
By J. H. BODENHEIMER,
[Seal] Agt. & Atty. in Fact.

Approved by:
(Signed) RUFUS E. FOSTER, Judge.

United States of America.

District Court of the United States, Eastern District of Louisiana.

Clerk's Office:

I, HENRY J. CARTER, Clerk of the District Court of the United States for the Eastern District of Louisiana, do hereby certify, that the foregoing 104 pages contain and form a full, complete, true and perfect transcript of the record, assignment of errors, and proceedings in the case of J. A. E. Pyle, Trustee, vs. Texas Transport & Terminal Company, et als., No. 14,242 of the docket of the said Court (made in accordance with the praecipe for the transcript of appeal, copied at page 1333 of the transcript of appeal in the case entitled as above and numbered 14,240 of the docket of the said Court).

Witness my hand and the seal of said Court, at the City of New Orleans, Louisiana, this 10th day of July, A. D. 1912.

[Seal] H. J. CARTER, Clerk.

That thereafter the following proceedings were had in said cause in the United States Circuit Court of Appeals for the Fifth Circuit, viz:

Argument and Submission.

Extract from the Minutes of March 20, 1913.

No. 2391.

J. A. E. PYLE, Trustee in Bankruptcy of Steele, Miller & Company,
versus
TEXAS TRANSPORT & TERMINAL COMPANY, COMPAGNIE GENERALE TRANSATLANTIQUE, and PAUL CHARDIN.

On this day this cause was called, and, after argument by William C. Dufour, Esq., for Appellant, and J. P. Blair, Esq., for Appellees, was submitted to the Court.

Opinion of the Court.

Filed April 8th, 1913.

United States Circuit Court of Appeals, Fifth Circuit.

No. 2389.

J. A. E. PYLE, Trustee, etc.,
v.
TEXAS TRANSPORT & TERMINAL CO. et al. and BANK DE MULHOUSE.

No. 2390.

J. A. E. PYLE, Trustee, etc.,
v.
TEXAS TRANSPORT & TERMINAL CO. et al. and COMPTOIR D'ESCOMPTE DE MULHOUSE.

No. 2391.

J. A. E. PYLE, Trustee, etc.,
v.
TEXAS TRANSPORT & TERMINAL CO. et al. and PAUL CHARDIN.

No. 2392.

J. A. E. PYLE, Trustee, etc.,
v.
TEXAS TRANSPORT & TERMINAL CO. et al. and SOCIETÉ GENERALE.

No. 2393.

J. A. E. PYLE, Trustee, etc.,
v.
TEXAS TRANSPORT & TERMINAL CO. et al. and CREDIT HAVRAIS.

Appeals from the District Court of the United States, Eastern District of Louisiana.

Before Pardee and Shelby, Circuit Judges, and Sheppard, District Judge.

By the COURT:

The appeals in the above numbered and entitled cases are affirmed on the authority of Lovell v. Newman & Son, 192 F. 753, and Hentz & Co., v. Lovell, Id. 762.

Judgment.

Extract from the Minutes of April 8, 1913.

No. 2391.

J. A. E. PYLE, Trustee in Bankruptcy of Steele, Miller & Company,
versus
TEXAS TRANSPORT & TERMINAL COMPANY, COMPAGNIE GENERALE TRANSATLANTIQUE, and PAUL CHARDIN.

This cause came on to be heard on the transcript of the record from the District Court of the United States for the Eastern District of Louisiana, and was argued by counsel;

On consideration whereof, It is now here ordered, adjudged and decreed by this Court, that the decree of the said District Court, in this cause, be, and the same is hereby affirmed;

It is further ordered, adjudged and decreed that the Appellant, J. A. E. Pyle, Trustee in Bankruptcy of Steele, Miller & Company, and the surety on the appeal bond herein, Southwestern Surety Insurance Company of Oklahoma, be condemned, in solido, to pay the costs of this cause in this Court, for which execution may be issued out of said District Court.

Petition for Rehearing.

Filed May 5th, 1913.

United States Circuit Court of Appeals, Fifth Circuit.

No. 2391.

J. A. E. PYLE, Trustee,
versus
TEXAS TRANSPORT & TERMINAL COMPANY et als.

Application for Rehearing.

The petition of J. A. E. Pyle, trustee, appellant in the above entitled cause, represents:

That there is error to petitioner's prejudice in the decree rendered by this Honorable Court in this cause affirming the decree from which petitioner's appeal was prosecuted and for specification of error, petitioner says:

That the decree is based upon the authority of the cases of Lovell, Trustee, v. Isidore Newman, and Hentz v. Lovell, reported in 193 F., p. 753.

It is respectfully submitted that the issue involved in the present suit is separate and distinct from the issues involved and presented in the case under authority of which the Court has affirmed this decree, in that the cases cited invoked solely the issue of appropriation of property, while in the instant case, the Court had before it a direct charge of giving and receiving an unfair preference within the intendment of the Bankruptcy Statute, which issue was neither presented nor decided in the Lovell or Hentz cases; that, therefore, the authority cited cannot be held to control the present case.

Wherefore, petitioner prays that a rehearing may be granted in this cause, and that upon such hearing, the judgment appealed from be reversed and that judgment be rendered in favor of petitioner, granting the relief prayed for.

(Signed) WM. C. DUFOUR,
(Signed) H. GENERES DUFOUR,
Solicitors for Appellant.

The undersigned hereby certifies that he is one of the solicitors for J. A. E. Pyle, trustee, appellant in the above entitled and numbered cause, and that in his opinion the foregoing petition for rehearing is well founded in law.

(Signed) WM. C. DUFOUR.

Order Denying Rehearing.

Extract from the Minutes of June 2nd, 1913.

No. 2391.

J. A. E. PYLE, Trustee in Bankruptcy of Steele, Miller & Company,
versus
TEXAS TRANSPORT & TERMINAL COMPANY, COMPAGNIE GENERALE TRANSATLANTIQUE, and PAUL CHARDIN.

Ordered that the petition for rehearing filed in this cause, be, and the same is hereby denied.

Petition for Appeal and Order.

Filed July 3d, 1913.

United States Circuit Court of Appeals, Fifth Circuit.

No. 2391.

J. A. E. PYLE, Trustee,
versus
THE TEXAS TRANSPORT & TERMINAL COMPANY et als.

The petition of J. A. E. Pyle, Trustee of Steele, Miller & Company, Bankrupts, with respect shows:

That the above entitled cause is now pending in the United States Circuit Court of Appeals for the Fifth Circuit and that a decree has been herein rendered on the 8th day of April, 1913, affirming the judgment of the District Court of the United States for the Eastern District of Louisiana; that the matter in controversy in said suit exceeds Three Thousand Dollars ($3000), besides interest and costs, and that the jurisdiction of none of the said Courts, is or was invoked, now is or was dependent, upon the opposite parties to the suit or controversy being aliens and citizens of the United States or citizens of different states; and that this cause does not arise under the patent laws, nor the copyright laws, nor the revenue laws, nor the criminal laws, of the United States and that it is not an admiralty case and that it is a proper cause to be reviewed by the Supreme Court of the United States on appeal.

Therefore, your petitioner respectfully prays that an appeal with supersedeas be allowed in the above cause, and that the Clerk of the United States Circuit Court of Appeals for the Fifth Circuit be directed to send the record and proceedings in said cause, with all things concerning same, to the Supreme Court of the United States in order that the errors complained of in the assignment of error herein filed by said appellant may be reviewed and if error be found corrected according to the laws and customs of the United States.

(Signed) WM. C. DUFOUR,
(Signed) H. GENERES DUFOUR,
Solicitors.

Order.

The foregoing petition is granted and the appeal allowed as prayed for upon appellant giving bond according to law in the sum of $250.00.

July 2d, 1913.

(Signed) DON A. PARDEE, *Judge.*

Assignment of Errors.

Filed July 3d, 1913.

United States Circuit Court of Appeals, Fifth Circuit.

No. 2391.

J. A. E. PYLE, Trustee,
versus
TEXAS TRANSPORT & TERMINAL COMPANY et als.

And now comes J. A. E. Pyle, Trustee in Bankruptcy of Steele, Miller & Company, Bankrupts, appellant, through William J. Lamb William C. Dufour and H. Generes Dufour, his solicitors and says

that in the record and proceedings aforesaid in the United States Circuit Court of Appeals for the Fifth Circuit in the above entitled cause and in the rendition of the final decree therein manifest, error has intervened to the prejudice of said appellant in this, to-wit:

(1) The United States Circuit Court of Appeals for the Fifth Circuit erred in affirming the decree of the United States District Court for the Eastern District of Louisiana.

(2) The said United States Circuit Court of Appeals for the Fifth Circuit erred in not reversing the said decree of the United States District Court for the Eastern District of Louisiana.

(3) The said United States — Court of Appeals for the Fifth Circuit erred in failing to sustain appellant's Assignment of Error No. 4 upon the record of said case, as follows:

"The Court erred in holding by delivering the actual cotton to the carriers, Steele, Miller & Company intended to appropriate and did appropriate said cotton to the fraudulent bills of lading acquired and held by defendant."

(4) The said United States Circuit Court of Appeals for the Fifth Circuit erred in failing to sustain appellant's Assignment of Error No. 5 upon the record of said case, as follows:

"The Court erred in holding that the defendant bank was in fact a purchaser of actual cotton from Steele, Miller & Company."

(5) The said United States Circuit Court of Appeals for the Fifth Circuit erred in failing to sustain appellant's Assignment of Error No. 6 upon the record of said case, as follows:

"The Court erred in failing to find and hold that the defendant knew or ought to have known or had reasonable grounds to believe that Steele, Miller & Company were insolvent at the time the defendant received the genuine bills of lading representing cotton actually shipped referred to in the bill of complaint."

(6) The said United States Circuit Court of Appeals for the Fifth Circuit erred in failing to sustain appellant's Assignment of Error No. 7, upon the record of said case as follows:

"The Court erred in failing to find and hold that Steele, Miller & Company, by delivering the genuine bills of lading to the defendant representing cotton actually shipped, thereby intended to prefer and did prefer said defendant to and over its other creditors and thereby intended to grant and did grant an illegal and unfair preference to the defendant, and that the defendant did receive a preference within the meaning and intendment of the bankrupt statute of the United States."

Wherefore, said J. A. E. Pyle, Trustee, as aforesaid, prays that for the errors aforesaid and other errors appearing in the record of said United States Circuit Court of Appeals for the Fifth Circuit in the above entitled cause to the prejudice of the appellant, said decree of the United States Circuit Court of Appeals for the Fifth Circuit be reversed and annulled and that said cause be remanded to the United States District Court for the Eastern District of Louisiana, with instructions to set aside the decree heretofore rendered in the trial of this cause and commanding a new trial for same and such other

proceedings in said cause as may be determined upon by this Honorable Court to the end that justice may be obtained in the premises.

(Signed) WM. C. DUFOUR,
(Signed) H. GENERES DUFOUR,
Solicitors.

Appeal Bond.

Filed July 7th, 1913.

J. A. E. PYLE, Trustee in Bankruptcy of Steele, Miller & Company,
vs.
THE TEXAS TRANSPORT AND TERMINAL COMPANY, COMPAGNIE GENERALE TRANSATLANTIQUE, and PAUL CHARDIN.

Know All Men by These Presents, that we, J. A. E. Pyle, Trustee in Bankruptcy of Steele, Miller & Company, as Principal, and Southwestern Surety Insurance Company, as Surety, are held and firmly bound unto The Texas Transport and Terminal Company, Compagnie Generale Transatlantique and Paul Chardin in the sum of Two Hundred and Fifty Dollars ($250.00), to be paid to the said, The Texas Transport and Terminal Company, Compagnie Generale Transatlantique and Paul Chardin; we bind ourselves and each of our heirs, executors and administrators, jointly and severally, firmly by these presents.

Sealed with our seals and dated the 3d day of July, A. D. 1913.

Whereas, the appellant in the above entitled suit has prosecuted an appeal to the Supreme Court of the United States to reverse the decree rendered and entered in said cause in the Circuit Court of Appeals for the Fifth Circuit on the 8th day of April, 1913.

Now, Therefore, the condition of this obligation is such that if the said appellant shall prosecute said appeal to effect and answer all damages and costs if he fails to make said appeal good, then this obligation shall be void; otherwise to remain in full force and virtue.

(Signed) J. A. E. PYLE, *Trustee,*
By WM. C. DUFOUR, *Solicitor.*
(Signed) SOUTHWESTERN SURETY INSURANCE CO. OF OKLAHOMA. [SEAL.]
By J H. DODENHEIMER,
Agent & Attorney-in-Fact.

The foregoing bond is approved this 4 day of July, A. D. 1913.

(Signed) DON A. PARDEE,
United States Circuit Judge, Fifth Circuit.

Clerk's Certificate.

UNITED STATES OF AMERICA:

United States Circuit Court of Appeals, Fifth Circuit.

I, Frank H. Mortimer, Clerk of the United States Circuit Court of Appeals for the Fifth Circuit, do hereby certify that the pages numbered from 83 to 99 next preceding this certificate contain full, true and complete copies of all the pleadings, record entries and proceedings, including the opinion of the United States Circuit Court of Appeals for the Fifth Circuit, in a certain cause in said Court, numbered 2391, wherein J. A. E. Pyle, Trustee in Bankruptcy of Steele, Miller & Company, is Appellant, versus The Texas Transport & Terminal Company, Compagnie Generale Transatlantique and Paul Chardin are Appellees, as full, true and complete as the originals of the same now remain in my office.

I further certify that the pages of the printed record numbered from 1 to 82 are identical with the printed record upon which said cause was heard and decided in the said Circuit Court of Appeals.

In testimony whereof I hereunto subscribe my name and affix the seal of the said Circuit Court of Appeals, at my office in the City of New Orleans, Louisiana, in the Fifth Circuit, this 10th day of July, A. D. 1913.

[Seal United States Circuit Court of Appeals, Fifth Circuit.]

FRANK H. MORTIMER,
Clerk of the United States Circuit Court of Appeals.

THE UNITED STATES OF AMERICA:

The President of the United States to The Texas Transport and Terminal Company, Compagnie Generale Transatlantique, and Paul Chardin, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States at Washington, D. C., within thirty (30) days from the date hereof, pursuant to a petition and order of appeal sued out and filed in the Clerk's Office of the United States Circuit Court of Appeals for the Fifth Circuit, in the cause wherein J. A. E. Pyle, Trustee in Bankruptcy of Steele, Miller & Company is Appellant and The Texas Transport and Terminal Company, Compagnie Generale Transatlantique and Paul Chardin are Appellees, to show cause, if any there be, why the decree rendered against the said J. A. E. Pyle, Trustee in Bankruptcy of Steele, Miller & Company and in said petition and order of appeal mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness, the Honorable Edward Douglass White, Chief Justice of

the United States, this 4th day of July in the year of our Lord one thousand nine hundred and thirteen.

DON A. PARDEE,
United States Circuit Judge.

Service accepted July 9, 1913.

DENEGRE & BLAIR,
Sol'rs for Paul Chardin.
GEO. H. TERRIBERRY,
Solcitor for Texas Tr. & Term. Co. and Compagnie Generale Transatlantique.

[Endorsed:] No. 2391. United States Circuit Court of Appeals, Fifth Circuit. J. A. E. Pyle, Trustee in Bankruptcy of Steele, Miller & Co., Appellant, vs. Texas Transport & Terminal Company, Compagnie Generale Transatlantique and Paul Chardin, Appellees. Citation. U. S. Circuit Court of Appeals. Filed Jul- 10, 1913. Frank H. Mortimer, Clerk.

Endorsed on cover: File No. 23,809. U. S. Circuit Court Appeals, 5th Circuit. Term No. 228. J. A. E. Pyle, trustee in bankruptcy of Steele, Miller & Company, appellant, vs. The Texas Transport & Terminal Company, Compagnie Generale Transatlantique, and Paul Chardin. Filed August 1st, 1913. File No. 23,809.

Office Supreme Court, U. S.
FILED
MAR 15 1915
JAMES D. MAHER
CLERK

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1914.

No. 228.

J. A. E. PYLE, Trustee in Bankruptcy of STEELE, MILLER & COMPANY, Appellant,

vs.

THE TEXAS TRANSPORT & TERMINAL COMPANY, COMPAGNIE GENERALE TRANSATLANTIQUE, and PAUL CHARDIN.

Memorandum Brief for Appellees.

The above-entitled appeal and appeals numbers 226, 227, 229 and 230 were tried, argued and decided together, both in the District Court and in the Court of Appeals. They present the same general questions of law and of fact. The evidence is the same in each case; that is to say, the evidence taken in one case was by stipulation deemed to be taken in all the other cases, and has been included in only one of the transcripts of record, that of Cause No. 226. The cases illustrate and explain each other, so that they may be more conveniently discussed and more readily understood when presented and considered together. We have, therefore, covered all the cases in one brief and argument, filed in No. 226. To that brief we now beg leave to refer the Court, and for the reasons therein stated, we ask that the judgment appealed from be affirmed.

Respectfully submitted,

GEORGE DENÈGRE,
JOSEPH PAXTON BLAIR,
VICTOR LEOVY,
Of Counsel for Appellees.

Office Supreme Court, U. S.
FILED
APR 3 1915
JAMES D. MAHER
CLERK

Supreme Court of the United States

October Term, 1914.

No. 228.

J. A. E. PYLE, TRUSTEE IN BANKRUPTCY OF STEELE, MILLER & COMPANY, Appellant,

versus

THE TEXAS TRANSPORT & TERMINAL COMPANY, COMPAGNIE GENERALE TRANSATLANTIQUE AND PAUL CHARDIN.

MEMORANDUM BRIEF FOR APPELLANTS.

As stated in the memorandum filed by the appellee, the above entitled appeal and appeals numbers 226, 227, 229 and 230 were tried, argued and decided together, both in the District Court and in the Circuit Court of Appeals. We also have covered all of the cases in one brief, filed in Number 226.

We ask for the same relief as has been asked for in that case and for the reasons stated in that brief.

Respectfully submitted,

W. J. LAMB,

WM. C. DUFOUR,

H. GENERES DUFOUR,

GEORGE JANVIER,

Of Counsel for Appellants.

(23,810)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1914.

No. 229.

J. A. E. PYLE, TRUSTEE IN BANKRUPTCY OF STEELE, MILLER & COMPANY, APPELLANT,

vs.

THE TEXAS TRANSPORT & TERMINAL COMPANY, COMPAGNIE GENERALE TRANSATLANTIQUE, AND SOCIETE GENERALE.

APPEAL FROM THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIFTH CIRCUIT.

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UNITED STATES OF AMERICA:

United States Circuit Court of Appeals, Fifth Judicial Circuit.

Pleas and Proceedings had and done at a regular term of the United States Circuit Court of Appeals for the Fifth Circuit, begun on Thursday, November 21st, A. D. 1912, at New Orleans, Louisiana, before the Honorable Don A. Pardee and the Honorable David D. Shelby, Circuit Judges, and the Honorable William B. Sheppard, District Judge.

J. A. E. PYLE, Trustee in Bankruptcy of Steele, Miller & Company,
Appellant,
versus
TEXAS TRANSPORT & TERMINAL COMPANY, COMPAGNIE GENERALE TRANSATLANTIQUE, and SOCIETE GENERALE, Appellees.

Be it Remembered, that heretofore, to-wit, on the 10th day of July, A. D. 1912, a transcript of the record of the above styled cause, pursuant to an appeal from the District Court of the United States for the Eastern District of Louisiana, was filed in the office of the Clerk of the said United States Circuit Court of Appeals for the Fifth Circuit, which said transcript was filed and docketed in said Circuit Court of Appeals as No. 2392, as follows:

UNITED STATES OF AMERICA.

UNITED STATES DISTRICT COURT, EASTERN DISTRICT OF LOUISIANA, NEW ORLEANS DIVISION.

J. A. E. PYLE, TRUSTEE,

Appellant,

versus

No. 14,243.

TEXAS TRANSPORT & TERMINAL COMPANY, ET ALS.,

Appellants.

Messrs. W. A. Percy,
J. A. Lamb, and
Dufour & Dufour, For J. A. E. Pyle, Trustee, Appellant.

Mr. George H. Terriberry, For the Texas Transport & Terminal Company, and Compagnie Generale Transatlantique, Appellees.

Messrs. Denegre & Blair, For Societe Generale, Appellee.

APPEAL FROM the United States District Court for the Eastern District of Louisiana, New Orleans Division, to the United States Circuit Court of Appeals for the Fifth Circuit, returnable within thirty (30) days from the first (1st) day of March, A. D. 1912, at the City of New Orleans, State of Louisiana.

Extension of thirty (30) days' time from the return of the appeal, to-wit, from March 31st, 1912, granted by the Honor-

able United States Circuit Court of Appeals for the Fifth Circuit.

Extension of thirty (30) days' time from the return of the appeal, to-wit, from April 30th, 1912, granted by the Honorable United States Circuit Court of Appeals for the Fifth Circuit.

Time for filing the transcript of appeal in the Honorable United States Circuit Court of Appeals for the Fifth Circuit, extended to the tenth (10th) day of July, A. D. 1912, as per agreements of counsel, copied at pages 1332 and 1336, respectively, of the transcript of appeal in the case bearing the above title, and numbered 14,240 of the docket of the said United States District Court.

TRANSCRIPT OF APPEAL.

BILL OF COMPLAINT.

Filed August 18, 1910.

United States District Court, Eastern District of Louisiana, New Orleans Division.

J. A. E. PYLE, TRUSTEE,

versus No. 14,243.

TEXAS TRANSPORT & TERMINAL COMPANY, ET ALS.

To the Honorable the Judge of the United States District Court, Eastern District of Louisiana:

J. A. E. Pyle, a citizen of the State of Mississippi, suing herein as trustee in bankruptcy of Steele, Miller & Company, brings this his bill of complaint against the Compagnie Generale Transatlantique, a corporation created under the laws of the Republic of France, with its domicile in the City of

Paris, France, the Texas Transport & Terminal Company, a corporation created under the laws of the State of New Jersey, but doing business in the City of New Orleans through W. H. Hendren, agent, F. Scheuch & Company, a commercial firm composed of Ferd Scheuch and Albert Schilling, of Havre, France, and Societe Generale, whom your orator is advised is a corporation created under the laws of France, domiciled in the City of Havre and doing business in said City of Havre, France, and the other persons against whom process is herein prayed; and thereupon your orator complains and says:

First. That Steele, Miller & Company, a partnership composed of L. C. Steele, J. H. Miller and C. H. G. Linde, was lately doing business in and had its principal place of business at Corinth, in the State of Mississippi, and within the Northern District of Mississippi; that the business of said firm of Steele, Miller & Company consisted of the purchasing and selling of cotton.

Second. That on May 4th, 1910, in the suit No. 123 entitled Knoop, Fabarius & Company, et al., vs. Steele, Miller &
Company, in the United States District Court for the
2 Northern District of Mississippi, application was made for an adjudication in involuntary bankruptcy against said firm and for the appointment of a temporary receiver, to take charge of the assets of said firm pending the action of the Court and pending the election of a trustee; that your orator, J. A. E. Pyle, was appointed by the Honorable Judge of the United States District Court for the Northern District of Mississippi, as temporary receiver in accordance with the prayer of said petition, and that your orator duly qualified as such, all of which will appear more fully from the petition and order filed in said cause and the oath and bond filed by your orator as temporary receiver in the said numbered and entitled cause, all of which are made part hereof as though fully and at length set forth herein, and will be produced at the trial of this cause.

Third. That on the 31st day of May, 1910, in the trial of said cause held in the manner and form prescribed by law, the said firm of Steele, Miller & Company was adjudicated

a bankrupt, and on the 11th day of July, 1910, at the meeting of the creditors held pursuant to law, your orator was elected trustee of the said firm of Steele, Miller & Company, all of which will appear more fully from the decree of adjudication in bankruptcy of the United States District Court for the Northern District of Mississippi rendered on the 31st day of May, 1910, in said cause, entitled Knoop, Fabarius & Co., et al., vs. Steele, Miller & Company, No. 123 of the docket of the United States District Court for the Northern District of Mississippi, in bankruptcy, and by reference to the proceedings before the referee in bankruptcy and the order approving the bond of your orator as trustee, which said proceedings are also made part hereof as though fully and at length set forth herein and which will be produced at the trial of the cause.

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Fourth. Your orator shows that on or prior to the 15th day of April, 1910, Steel, Miller & Company were indebted to the Societe Generale in the sum of 154,238.95 francs, which at the rate of exchange amounted to $29,604.40, and that said indebtedness arose out of the following transactions:

That said Steele, Miller & Company at a date to your orator unknown had adopted a fraudulent scheme of obtaining money, and in furtherance of which the said bankrupt firm did draw drafts for large sums of money and did attach to such drafts what purported to be through bills of lading of carriers for lots of cotton specifically described in such bills of lading, and thereupon the said Steele, Miller & Company received the money called for by such drafts either by their sale or their acceptance and payment by the drawees; that the said bills of lading resembled in form and appearance the bills of lading issued by carriers at places from which Steele, Miller & Company, from time to time, shipped cotton over the lines of such carriers, but the bills of lading attached to such drafts did not represent cotton actually received and shipped by the carriers who, it was purported, issued them, but were spurious and forged bills of lading and in no sense represented cotton then in the possession of Steele, Miller & Company or delivered to the carriers for transportation. Your orator further avers that the sale, negotiation and acceptance of drafts with actual bills of lading for the cotton

4

thereto attached, under the custom which involves the delivery of such bills of lading upon the payment of the drafts, was and is the usual and customary method by which sales of cotton were and are accomplished by persons engaged in such trade, and the purchases of cotton were and are accomplished by the purchase or acceptance and payment of such drafts with bills of lading thereto attached; that, under the custom and practice of the cotton trade, such drafts were and are purchased or paid wholly on the security of the bills of lading thereto attached, and for the purpose of obtaining the cotton therein mentioned, and the purchase or acceptance and payment of the said drafts with the said bills of lading attached constituted the entire transaction between the parties, the bills of lading supposedly representing cotton which has passed into the carriers for delivery subject to the presentation of the bill of lading, and the payment and acceptance of the draft and the acquisition of the said bill of lading passing the muniment of title to the party who had paid or accepted the said draft.

Fifth. Your orator shows that on or about the 7th day of February, 1910, and within ninety days thereafter the said Societe Generale became the acceptor of drafts drawn by Steele, Miller & Company in the sum of 154,238.95 francs or at the rate of exchange $29,604.40, to which drafts were attached papers purporting to be bills of lading of carriers for 400 bales of cotton, and your orator annexes hereto as Exhibit "A" a statement showing the dates of such drafts, the name of the drawee, viz., Societe Generale, the time when
5 the drafts were payable, the marks of the cotton and the number of the bales thereof for which papers purporting to be bills of lading were attached to such drafts, and the amounts of such drafts in francs, in which form of currency the drafts were drawn, and your orator now avers as a matter of fact that the papers attached to the said drafts were not bills of lading for which any cotton had been received or shipped by the carriers which it was purported had issued such bills of lading as recited therein, and such papers purporting to be the bills of lading were therefore wholly spurious and of no force and effect as representing the cotton called for by them. The drafts aforesaid, and appearing in the said Exhibit "A" attached hereto, were accepted and paid

for by or for the Societe Generale for the purpose of obtaining and thus buying the bills of lading thereto attached, and the cotton called for by such ladings, and by such acceptances and payment, your orator is advised and charges that the Societe Generale became and was a creditor of said Steele, Miller & Company in the sum of money hereinbefore stated.

Sixth. Your orator avers that the firm of Scheuch & Company, herein made a defendant, was at the time of the transactions herein recited, a commercial firm engaged in buying and selling cotton in Havre, France; that the said firm would and did purchase from Steele, Miller & Company certain cotton, and, in accordance with the customs of the trade, did open banker's credit against which Steele, Miller & Company would draw its drafts to which were attached the bills of lading, presumably bearing the marks of the cotton
6 shipped, and to which were further attached what is known in the trade as "all necessary documents"; that in the transactions herein complained of, the cotton referred to in the bills of lading and in the drafts hereinbefore described was sold to Scheuch & Company, draft to be made upon the Societe Generale, papers attached to said drafts to the order of Steele, Miller & Company, notify Scheuch & Company.

Your orator further avers that for a long time previous to the 1st day of April, 1910, and at all times since that date, Steele, Miller & Company were wholly insolvent; that they had issued and negotiated drafts with spurious bills of lading attached in the manner hereinabove described, which had been purchased and paid for by persons in various parts of the world in an amount of money approximating three million dollars ($3,000,000) or more.

Seventh. Your orator shows that on or about March 23, 1910, the said Steele, Miller & Company had in its possession or under its control at Columbus, Mississippi, 400 bales of cotton marked as follows:

Q. M. T. A.
Q. P. L. H.
R. D. F. E.
Q. R. T. Y.

and that said cotton on or about said day was shipped by the

said Steele, Miller & Company on through inland bills of lading via the Mobile & Ohio Railroad to the order of Steele, Miller & Company, and your orator annexes hereto as Exhibit "B" a statement showing the marks of said cotton, the number of bales of each mark, the date of delivery and issuance of bills of lading by the carrier and the destination of
7 said cotton, and your orator now charges that, although said cotton was only deivered to the carrier on the 23rd day of March, 1910, by collusion between the representative of said carrier and the said Steele, Miller & Company or by deception practiced by the said Steele, Miller & Company upon the representatives of said carrier the aforesaid bills of lading were back-dated so as to pretend to show that the cotton was delivered to the carrier on the 7th day of February, 1910. Your orator avers that said cotton, passing on through bills of lading, was stopped at the City of New Orleans by J. D. Hardin, Jr., acting as the agent of Steele, Miller & Company, and that said J. D. Hardin, Jr., or J. D. Hardin, Jr., & Company, as said agent, stopped said cotton by virtue of having possession of the said original through bills of lading, and on or about April 15, 1910, the said J. D. Hardin, Jr., or J. D. Hardin, Jr., & Company, acting as the agent of Steele, Miller & Company, did surrender the said through bills of lading to the representative of the Mobile & Ohio Railroad Company at the City of New Orleans, and thereupon, upon notice being issued to the Compagnie Generale Transatlantique, through its agent, the Texas Transport & Terminal Company, that the said cotton was in the City of New Orleans ready for shipment via a ship of said line, and that the original through bills of lading had been surrendered, the said Compagnie Generale Transatlantique, through its said agent, the Texas Transport & Terminal Company, issued its custody bills of lading for said cotton. Your orator annexes hereto as Exhibit "C" a statement showing the date when the
8 said cotton was delivered to the Texas Transport & Terminal Company as agent of the Compagnie Generale Transatlantique, the number and the date of the bills of lading issued by said company, the marks and number of bales of each mark of said cotton so delivered and represented by said bills of lading.

Eighth. Your orator avers that about April 15, 1910, as

herein stated above, the Societe Generale and Scheuch & Company, or both of them, were ordinary unsecured creditors of Steele, Miller & Company in the sum of $29,604.40, representing by the drafts herein described and to which were attached the spurious and forged bills of lading; that on or about said date the said Steele, Miller & Company, being then insolvent, with intent to prefer said Societe Generale or Scheuch & Company, or both of them, over their other creditors, did deposit in the United States mail the said port bills of lading, the said bills of lading being addressed to Scheuch & Company, and the same having been indorsed by Steele, Miller & Company, the object and purpose of forwarding said port bills of lading being to substitute the same for the forged and worthless bill of lading attached to the drafts held by the said Societe Generale, or Scheuch & Company, or both of them, and that said port bills of lading in due course were received by Scheuch & Company ann delivered to the Societe Generale, and your orator is advised that the Societe Generale thereupon surrendered its spurious and forged bills of lading to Scheuch & Company, who is now holding them, or by arrangement between said Scheuch & Company and the said Societe
9 Generale, said spurious bills of lading are being held by the said Societe Generale for account of said parties. Your orator avers that the transmission of said port bills of lading to be substituted for the said fraudulent bills of lading was done with the intent to prefer the said Societe Generale, and that when the said bills of lading were mailed to the said Scheuch & Company for delivery to the Societe Generale, and were received by the said Scheuch & Company and delivered to the Societe Generale, the said Scheuch & Company and the said Societe Generale, in accepting the said bills of lading and permitting the substitution of the said valid and port or custody bills of lading for the worthless bills of lading then held, knew or should have known and had reasonable cause to believe that a preference was thereby given and intended, and knew or should have known that Steele, Miller & Company was at said time insolvent and that the effect of the mailing, the receipt and acceptance and substitution of said bills of lading was to enable the said Scheuch & Company or the said Societe Generale to obtain payment of its said draft, and your orator now charges that the effect of the act hereinabove described, if maintained and permitted by this Honor-

able Court, will be to enable the said Societe Generale or Scheuch & Company, or both of them, to obtain a greater per cent of their said debt than any other creditor of said bankrupt, and that such acts should be set aside. Your orator charges that the acts hereinabove complained of were performed within four months prior to the filing of the petition of involuntary bankruptcy herein, and your orator is advised that the act or acts complained of are voidable at his
10 election, and he does now elect to avoid the same and files this his bill to avoid said transfer.

Your orator avers that at the time of the institution of the proceedings in bankruptcy and for a year previous to that time the said firm of Steele, Miller & Company and the individual members of said firm were insolvent within the meaning and intent of the bankrupt laws of the United States, and that said Steele, Miller & Company and the individual members of said firm are so insolvent and that they have not surrendered assets of sufficient value to pay the creditors of said estate and that the amount surrendered by said bankrupts, including any amount that might be recovered by litigation, and the estates of the individual members when added to the firm assets will not be sufficient to discharge the debts and obligations of said Steele, Miller & Company, but will only pay a small proportion of said obligations.

Ninth. Your orator avers that, at the time of the filing of the petition in involuntary bankruptcy herein referred to, 2,494 bales of said cotton were about to be shipped on the steamship "Texas" to Havre, France, and that the said 2,494 bales of cotton were actually loaded upon the said steamship; that 500 bales of said cotton were in the custody of the New Orleans Terminal Company at Port Chalmette; that, to-wit, on the 7th day of May, 1910, your orator as receiver in bankruptcy of said estate filed his petition for injunction against the removal of said cotton in the United States District Court for the Eastern District of Louisiana, and thereupon the Hon-
orable District Court granted a restraining order,
11 and subsequently on the 9th day of May, 1910, said Court issued an injunction pendente lite, enjoining, restraining and prohibiting the master, owner and agent of the steamship "Texas" from removing from the jurisdiction of this Court the cotton referred to in said proceedings, and on the

31st day of May, 1910, issued its injunction against the New Orleans Terminal Company to the same effect, all of which will appear more fully by the record of said proceedings entitled J. A. E. Pyle, Receiver, vs. Philip Landgren, Master, S. S. Texas, et al., No. 14,219 of the docket of the United States District Court for the Eastern District of Louisiana, which said record is made part hereof as though fully and at length set forth herein. Your orator avers that upon the issuance of said injunction, the Texas Transport & Terminal Company, the agent of the Compagnie Generale Transatlantique, the owner of said steamship "Texas," acting by and with the consent of the master and owner of said vessel, caused the cotton, the removal of which had been enjoined, to be discharged from said ship and stored in the Kentucky press in this city, to remain there until the further orders of said Court, all in accordance with the decree rendered in the above numbered and entitled cause, and your orator avers that the said cotton is now in the said Kentucky press awaiting the determination of this suit. Your orator avers that the cotton hereinabove described was and is part of and included in the cotton in the custody of the Texas Transport & Terminal Company, agent of the Compagnie Generale Transatlantique, owner of the steamship "Texas," and now stored in the Kentucky Press, awaiting the determination of this suit. Your orator attaches
12 hereto a list as Exhibit "D" a table showing the marks of the cotton, the removal of which was enjoined in said proceedings.

Tenth. Your orator further avers that the Texas Transport & Terminal Company, W. H. Hendren, its agent, and the Compagnie Generale Transatlantique decline to deliver said cotton or any part thereof to complainant or to any other person until it has been adjudged who is the owner of this cotton and to whom the possession thereof should be delivered by it.

Eleventh. Your orator avers that, although the Texas Transport & Terminal Company holds itself out as the duly accredited agent of the Compagnie Generale Transatlantique and does and performs acts for and in behalf of said Compagnie Generale Transatlantique, your orator is informed that said Compagnie Generale Transatlantique has never desig-

nated the said Texas Transport & Terminal Company as its agent for the service of process in this state as required by the laws of this state, and that process should issue herein against the said Compagnie Generale Transatlantique through John T. Michel, Secretary of State of the State of Louisiana, in accordance with the laws of Louisiana upon the subject matter.

Twelfth. Your orator further shows that the said Scheuch & Company and the individual members of said firm, and the Societe Generale are not residents of the Eastern District of Louisiana, but are aliens. That neither said Scheuch & Company nor the individual members of said firm nor the Societe Generale or any of its agents or officers are at present within the Eastern District of Louisiana or in the United States, and neither the said Scheuch & Company nor the individual members of said firm, nor the Societe Generale, are represented by anyone authorized to accept or receive service of process and that service by publication in the manner and form provided in such cases is necessary in the premises.

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Thirteenth. Your orator submits himself to the jurisdiction of this Court, and offers to do equity, and to perform such terms and conditions as may be imposed by the Court upon the granting of the relief hereinafter prayed for.

The premises considered, your orator prays that this Court will take jurisdiction of this his bill; that the Compagnie Generale Transatlantique and the Texas Transport & Terminal Company be made parties respondent hereto, and that by appropriate process and orders they be severally required to answer this bill, but not under oath, answer under oath being hereby expressly waived; that this Court's writ of subpoena issue to the said Compagnie Generale Transatlantique and the Texas Transport & Terminal Company, commending [commanding] them to answer this bill according to the rule of this Court, but not under oath, answer under oath being hereby expressly waived; that service upon the Compagnie Generale Transatlantique be made upon John T. Michel, Secretary of State of the State of Louisiana, at Baton Rouge, Louisiana; that by appropriate orders and process Scheuch & Company and the Societe Generale be required to appear in this cause and plead or demur to and answer this bill, but not under

oath, answer under oath being expressly waived; that pending the final hearing of this bill said Compagnie Generale Transatlantique, the Texas Transport & Terminal Com-
14 pany and W. H. Hendren, agent, their officers and employes, be enjoined and restrained from removing or disposing of said 400 bales of cotton; that upon the final hearing of this bill this Court will set aside the transfer of the said 400 bales of cotton by the said bankrupt to the said Societe Generale or Scheuch & Company, or both of them, and hold the same void and of no effect and decree, that the title to the said cotton and the right of possession thereof is in your orator and will permit your orator to take possession of said cotton and administer the same, or the proceeds thereof, for the benefit of the creditors in bankruptcy of Steele, Miller & Company in said bankruptcy proceedings in which said estate is being administered in the United States District Court for the Northern District of Mississippi and in the ancillary proceedings in the United States District Court for the Eastern District of Louisiana.

And if your orator is mistaken in the relief prayed for, then he prays for such other, further and general relief as in equity and good conscience he may be entitled to.

(Signed) W. A. PERCY,
(Signed) J. W. LAMB,
(Signed) SAUNDERS, DUFOUR & DUFOUR,
Solicitors.

15 State of Louisiana,
Parish of Orleans,
City of New Orleans.

William C. Dufour, being duly sworn, deposes and says:

That he is a member of the firm of Saunders, Dufour & Dufour, attorneys at law in the City of New Orleans; that he is one of the attorneys for J. A. E. Pyle, trustee; that the said J. A. E. Pyle, trustee, is a resident of the State of Mississippi, and is not now in the State of Louisiana, and is not otherwise represented; and that the allegations contained in the foregoing petition are true and correct to the best of his knowledge and belief, so help him God.

(Signed) WM. C. DUFOUR.

Sworn to and subscribed before me this 12th day of August, 1910.

(Signed) JOHN JANVIER,
Notary Public.

[Seal]

16 EXHIBIT "A," ATTACHED TO BILL OF COMPLAINT.

Filed August 18, 1910.

Exhibit "A."

Statement Societe Generale, Havre, France.

Date, 2/7/1910; No. of draft, 2,178; marks, Q. M. F. A.; bales, 100; amount, 38,607.70; pretended origin of shipment, Columbus, Miss.; date, 2/7/1910; No. of draft, 2,179; marks, Q. P. L. H.; bales, 100; amount, 38,684.15; pretended origin of shipment, Columbus, Miss.; date, 2/7/1910; No. of draft, 2,180; marks, R. D. F. E.; bales, 100; amount, 38,309.35; pretended origin of shipment, Columbus, Miss.; date, 2/7/1910; No. of draft, 2,181; marks, Q. R. T. Y.; bales, 100; amount, 38,637.75; pretended origin of shipment, Columbus, Miss. Total bales, 400. Total amount, 154,238.95. Which, at 5.21, amounts to $29,604.40.

17 EXHIBIT "B," ATTACHED TO BILL OF COMPLAINT.

Filed August 18, 1910.

Exhibit "B."

Statement of Cotton Shipped by Steele, Miller & Company to J. D. Hardin, Jr., & Co., of New Orleans on Through B/L and Exchanged, Showing the Origin and Marks of Cotton as Follows:

Date, 3/23/1910; W. B. railroad, M. & O.; shipped to order, B/L surrendered—S/o Havre Port B/L taken; marks,

Q. M. T. A.; No bales, 100; date, 3/23/1910; W. B. railroad, M. & O.; shipped to order, B/L surrendered—S/o Havre Port B/L taken; marks, Q. P. L. H.; No. bales, 100; date, 3/23/1910; W. B. railroad, M. & O.; shipped to order, B/L surrendered—S/o Havre Port B/L taken; marks, R. D. F. E.; No. bales, 100; date, 3/23/1910; W. B. railroad, M. & O.; shipped to order, B/L surrenderd—S/o Havre Port B/L taken; marks, T. R. T. Y.; No. bales, 100. Total bales, 400.

B/L back-dated to 2/7/1910.

From Columbus, Miss.

18 EXHIBIT "C," ATTACHED TO BILL OF COMPLAINT.

Filed August 18, 1910.

Exhibit "C."

Statement of Cotton Delivered to J. D. Hardin, Jr., & Co., to the Texas Transport & Terminal Co., Agents for the Steamer "Texas," Showing Marks and Date of Custody Bills of Lading Which Were Exchanged by J. D. Hardin, Jr.. & Co., Inland B/L for the Custody Bills of Lading, Said Inland B/L Being Delivered to the Agent of M. & O. R. R. at New Orleans—Mr. Bellops.

Date, April 15, 1910; custody; marks, Q. M. T. A.; No. bales, 100; date, April 15, 1910; custody; marks, T. P. L. H.; No. bales, 100; date, April 15, 1910; custody; marks, R. D. F. E.; No. bales, 100; date, April 15, 1910; custody; marks, T. R. T. Y.; No. bales, 100. Total No. bales, 400.

19 United States District Court, Eastern District of Louisiana.

J. A. E. Pyle, Trustee,
vs. No. 14,243
Texas Transport & Terminal Company et als.

Considering the allegations of this bill and the allegations in support thereof,

It is now ordered, That this bill be filed and process issue as prayed for.

It appearing to the Court that there is danger of irreparable injury to complainant unless the acts sought to be enjoined herein are restrained until the hearing of a motion for injunction in this case, it is ordered:

1. That the defendants, the Texas Transport & Terminal Company and the Compagnie Generale Transatlantique, and each of them, and the individual members thereof, and each of their servants, agents and employees, be and they are hereby restrained and enjoined until the further order of the Court herein from removing from the jurisdiction of this Court the 400 bales of cotton described in the bill filed in this cause, leave being given to the said Texas Transport & Terminal Company and the Compagnie Generale Transatlantique, or any other party in interest, to apply after five days notice to complainant's counsel for permission to bond said cotton.

2. That the defendants, Texas Transport & Terminal Company and Compagnie Generale Transatlantique, and each of them, show cause before this Court in the United States court-room at the City of New Orleans, at eleven o'clock a. m., on the first Monday in November, to-wit, Monday the
20 seventh day of November, 1910, why an injunction pendente lite as prayed for in the said bill should not be issued.

3. That this restraining order shall be in force and effect from the date hereof until the hearing of complainant's motion for an interlocutory injunction herein, provided that complainant furnish bond within ten days from the date of this order in the sum of $400.00, payable to defendant with

surety approved by the Clerk of this Court and conditioned substantially as hereinafter mentioned. The condition of said bond shall be substantially as follows:

Whereas, a restraining order has been made in the above numbered and entitled cause by the terms of which the defendants, and each of them, and each of their agents and employees are restrained until an application for an interlocutory injunction herein is determined from doing or causing to be done certain acts.

Now, therefore, if the above mentioned J. A. E. Pyle, receiver, shall pay or cause to be paid all damages caused by the issuance of said restraining order, and the costs of this cause in connection therewith in the event that said restraining order is dissolved or vacated as having been wrongfully issued, or because the said acts are improperly restrained, then this bond to be void, otherwise to remain in full force and effect.

It further appearing to the Court that said defendants, Scheuch & Company and Fred Scheuch and Albert Schilling, the individual members of said firm, and Societe Generale, are not inhabitants of the Eastern District of Louisiana, upon whom service of process can be made;

It is ordered that the said defendants, Scheuch
21 & Company and Fred Scheuch and Albert Schilling, individual members of said firm, and Societe Generale, shall appear, plead, answer or demur by the first Monday of November, 1910; that a copy of this order be served upon said defendants wherever found, and if said personal service is not practicable, that said defendants be notified of this order so directing them to appear, plead, answer or demur by the first Monday of November, 1910, by publication thereof in a daily newspaper in the City of New Orleans, La., not less than once a week for six consecutive weeks.

(Signed) RUFUS E. FOSTER, Judge.

August 16th, 1910.

Notation as to the Publication of a Certified Copy of the Foregoing Order:

Published in the the
New Orleans Item on
Monday, Septr. 12th, 1910, and on

Monday, Septr. 19th, 1910, and on
Monday, Septr. 26th, 1910, and on
Monday, Octr. 3rd, 1910, and on
Monday, Octr. 10th, 1910, and on
Monday, Octr. 17th, 1910.

(Signed) F. H. MORTIMER, Clerk.
Per GEO. W. ROBERTSON,
Deputy Clerk.

22 MARSHAL'S RETURNS ON ORDER ON BILL OF COMPLAINT.

14,243

Filed August 30, 1910.

Received by U. S. Marshal, New Orleans, La., Aug. 18/10. And on Aug. 5/10, I served the original writ of which this a certified copy on the Texas Transport and Terminal Co., by handing the same to W. H. Hendren, local manager in person in their office in New Orleans, La.

(Signed) VICTOR LOISEL,
U. S. Marshal.
(Signed) By B. F. QUEEN, Dy.

Received by U. S. Marshal, New Orleans, La., Oct. 18/10. And on Aug. 26/10, I served copy hereof on E. J. McGivney, Asst. Sect'y of State of La., by handing same to him in person in Baton Rouge, La.

(Signed) VICTOR LOISEL,
U. S. Marshal.
(Signed) By T. I. GALBRITH, Dep.

23 SUBPOENA IN CHANCERY.

Issued August 18th, 1910.

United States of America.
The President of the United States,

To the Marshal of the Eastern District of Louisiana—Greeting:

You are hereby commanded to summon the Texas Transport & Terminal Company to appear before a District Court of the United States of America, to be holden at the City of New Orleans, Louisiana, on the first Monday of November, 1910, then and there to answer a bill in chancery filed against it and others, wherein J. A. E. Pyle, trustee in bankruptcy of Steele, Miller & Company, is complainant, and said Compagnie Generale Transatlantique, Texas Transport & Terminal Company, F. Scheuch & Company and Societe Generale are defendants.

Herein fail not, and have you then and there this writ, with your indorsement thereon, how you have executed the same.

Witness, the Honorable Rufus E. Foster, Judge of the District Court of the United States, at New Orleans, La., this 18th day of August, in the year of our Lord one thousand nine hundred and ten, and 135 year of American independence.

[Seal of Court]
(Signed) FRANK H. MORTIMER, Clerk.

The defendant is hereby notified that it is required to enter its appearance in the Clerk's Office of the United States District Court on or before the first Monday of November, 1910, otherwise the bill may be taken pro confesso.

(Signed) FRANK H. MORTIMER, Clerk.

Clerk's Office:
A true copy.
(Signed) FRANK H. MORTIMER, Clerk.

24 [Indorsed on back:] No. 14243. United States District Court, Eastern District of Louisiana, New Orleans Division. J. A. E. Pyle, Trustee, vs. Texas Transport & Terminal Company et als. Subpoena in Chancery. Marshal's Return.

MARSHAL'S RETURN ON SUBPOENA IN CHANCERY.

Filed August 30th, 1910.

Received by U. S. Marshal, New Orleans, La., Aug. 18/10. And on Aug. 25/10, I served the original writ of which this writ is a certified copy on the Texas Transport & Terminal Co., by handing the same to W. H. Hendren, local manager, in person in their office in New Orleans, La.

VICTOR LOISEL,
U. S. Marshal.

(Signed) By B. F. QUEEN, Dy.

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25 SUBPOENA IN CHANCERY.

Issued August 18th, 1910.

United States of America.
The President of the United States,

To the Marshal of the Eastern District of Louisiana—Greeting:

You are hereby commanded to summon the Compagnie Generale Transatlantique, through John T. Michel, Secretary of State of the State of Louisiana, at Baton Rouge, Louisiana, to appear before a District Court of the United States of America, to be holden in the City of New Orleans, Louisiana, on the first Monday of November, 1910, then and there to answer a bill in chancery filed against it and others, wherein J. A. E. Pyle, trustee in bankruptcy of Steele, Miller & Company, is complainant, and said the Compagnie Generale Transatlantique, Texas Transport & Terminal Company, F. Scheuch & Company and Societe Generale are defendants.

Herein fail not, and have you then and there this writ, with your indorsement thereon, how you have executed the same.

Witness, the Honorable Rufus E. Foster, Judge of the District Court of the United States, at New Orleans, La., this 18th day of August, in the year of our Lord one thousand nine hundred and ten, and 135 year of American Independence.

[Seal of Court]

(Signed) FRANK H. MORTIMER, Clerk.

The defendant is hereby notified that it is required to enter its appearance in the Clerk's Office of the United States District Court on or before the first Monday of November, 1910, otherwise the bill may be taken pro confesso.

(Signed) FRANK H. MORTIMER, Clerk.

Clerk's Office:
A true copy.

(Signed) FRANK H. MORTIMER,
[Seal] Clerk.

26 [Indorsed on back:] No. 14243. United States District Court, Eastern District of Louisiana, New Orleans Division. J. A. E. Pyle, Trustee, vs. Texas Transport and Terminal Company et als. Subpoena in Chancery. Marshal's Return.

MARSHAL'S RETURN ON SUBPOENA IN CHANCERY.

Filed August 30th, 1912.

Received by U. S. Marshal, New Orleans, Aug. 18/10.
And on the 26th day of the same month and year I served the original of which this writ is a certified copy on John T. Michel, Secretary of the State of Louisiana, by handing the same to the Asst. Secretary of the State of Louisiana, Eugene J. McGivney, in person, in the City of Baton Rouge, Louisiana.

(Signed) VICTOR LOISEL,
U. S. Marshal.

(Signed) By T. I. GALBRETH,
Dep. U. S. Marshal.

27 BOND OF J. A. E. PYLE, TRUSTEE.

Filed August 25th, 1910.

United States District Court, Eastern District of Louisiana.

J. A. E. Pyle, Trustee,
vs. No. 14243
Texas Transport and Terminal Company, et als.

Know All Men By These Presents: That we, J. A. E. Pyle, Trustee of Steele, Miller & Company, bankrupt, appointed by and acting under authority of the District Court of the United States for the Northern District of Mississippi, as principal, and William C. Dufour, as surety, are held and firmly bound unto the Compagnie Generalè Transatlantique, the Texas Transport & Terminal Company, F. Scheuch & Company, and Societe Generale, defendants herein, for the use and benefits of defendants in the below mentioned suit, in the full and true sum of four hundred dollars ($400.00) lawful money of the United States of America, for the payment whereof we bind ourselves, our heirs, executors, successors, and assigns firmly by these presents.

Thus done and signed in the City of New Orleans, State of Louisiana, on this 24th day of August, A. D. 1910.

Now, therefore, the condition of the above obligation is such that,

Whereas, the said J. A. E. Pyle, trustee in bankruptcy of Steele, Miller & Company, did, in the proceedings No. 14243 of the docket of the United States District Court for the Eastern District of Louisiana, entitled "J. A. E. Pyle, Trustee, versus Texas Transport & Terminal Co., et als.," apply for and obtain a restraining order against the Compagnie Generale Transatlantique and the Texas Transport & Terminal Company, restraining and enjoining them, and each of them, and the individual members thereof, and each of their servants, agents, and employees, until the further order of the Court herein, from removing from the jurisdiction of the Court the 400 bales of cotton described in the pleadings filed in this cause upon condition that said trustee, J. A.

28 E. Pyle, should furnish bond.

Now, therefore, if the above mentioned J. A. E.

Pyle, trustee, shall pay or cause to be paid all damages caused by the issuance of said restraining order, and the costs of this cause in connection therewith in the event that said restraining order is dissolved or vacated as having been wrongfully issued, or because the said acts are improperly restrained, then this bond to be void, otherwise to remain in full force and effect.

(Signed) J. A. E. Pyle, Trustee,
By SAUNDERS, DUFOUR & DUFOUR,
(Signed) WM. C. DUFOUR.

William C. Dufour, surety on the within bond, being duly sworn, says that he resides in the City of New Orleans, Louisiana, and is worth the sum of four hundred dollars ($400.00) over and above all his just debts and liabilities.

(Signed) WM. C. DUFOUR.

Sworn to and subscribed before me this 24th day of August, 1910.

(Signed) ROSS E. BREAZEALE, [Seal]

This bond is approved for the sum of four hundred dollars.

(Signed) GEO. W. ROBERTSON.
Deputy Clerk.

29 RESTRAINING ORDER, ISSUED AUGUST 25th, 1910, TO THE TEXAS TRANSPORT & TERMINAL COMPANY AND THE COMPAGNIE GENERALE TRANSATLANTIQUE.

United States of America.

District Court of the United States, Eastern District of Louisiana, New Orleans Division.

J. A. E. Pyle, Trustee,
vs. No. 14,243
Texas Transport & Terminal Company et als.

The President of the United States,

To the Texas Transport & Terminal Company and the Compagnie Generale Transatlantique—Greeting:

Whereas, it has been represented unto us in our said District Court on the part of J. A. E. Pyle, trustee in bankruptcy of Steele, Miller & Company, in a bill in equity lately exhibited against you, and each of you, touching certain matters and things therein set forth; and, whereas, the Honorable Rufus E. Foster, the Judge of our said Court, upon due consideration thereof, has made and allowed an order in said cause whereby you, and each of you, are required to show cause on the seventh day of November, 1910, at 11 A. M., why an injunction should not issue as prayed in said bill of complaint. And, whereas, the said Judge has granted and allowed an order restraining you, and each of you, immediately and forthwith and during the pendency of said motion for an injunction to the full extent and effect as prayed for in said bill of complaint.

Now, therefore, in consideration of the premises and of the allegations in said bill of complaint contained, you, the said Texas Transport & Terminal Company and the said Compagnie Generale Transatlantique, your agents, attorneys and servants, and each of you, are hereby commanded and strictly enjoined under the penalty of the law, that you and each of you absolutely refrain and desist from removing from the jurisdiction of this Court the 400 bales of cotton described in

the bill filed in this cause. And that you, the said Texas Transport & Terminal Company and the said Compagnie Generale Transatlantique, your agents, attorneys and servants, and each of you, remain so inhibited and restrained until the further order of our said Court in the premises.

Witness the Honorable Rufus E. Foster, Judge of said Court, at the City of New Orleans, La., this 25th day of August, in the year of our Lord 1910.

(Signed) FRANK H. MORTIMER, Clerk.
By GEO. W. ROBERTSON,
Deputy Clerk.

A true copy.

(Signed) GEO. W. ROBERTSON,
Deputy Clerk.

30 [Indorsed on the back:] No. 14243. U. S. District Court, Eastern District of Louisiana, New Orleans Division. J. A. E. Pyle, Trustee, vs. Texas Transport & Terminal Company, et als. Restraining Order.

MARSHAL'S RETURNS ON RESTRAINING ORDER.

Filed September 12th, 1910.

Received by U. S. Marshal, New Orleans, La., Aug. 25/10. And on same day, I served the original of which this is a certified copy on the Texas Transport Terminal Co. et als., by handing the same to W. H. Hendren, local manager, in person in their office in New Orleans, La.

(Signed) VICTOR LOISEL,
U. S. Marshal.
(Signed) By B. F. QUEEN, Dy.

Received by U. S. Marshal, New Orleans, La., Aug. 25/10. And on Sept. 10/10, I served the original writ of which this is a certified copy on the Compagnie Generale Transatlantique, by handing the same to Eugene McGivney, Ass't Sec. of State in Baton Rouge, La.

VICTOR LOISEL,
U. S. Marshal.
(Signed) By T. F. LAICHE, Dy.

31 APPEARANCE OF GEORGE H. TERRIBERRY AS SOLICITOR FOR TEXAS TRANSPORT & TERMINAL COMPANY AND COMPAGNIE GENERALE TRANSATLANTIQUE.

Filed September 6, 1910.

District Court of the United States, Eastern District of Louisiana, New Orleans Division.

J. A. E. Pyle, Trustee,
vs. No. 14,243
Texas Transport & Terminal Company et als.

To the Clerk of Said Court:

Please enter my appearance as solicitor for the Texas Transport & Terminal Company and Compagnie Generale Transatlantique, defendants in the above styled and numbered cause.

(Signed) GEO. H. TERRIBERRY.

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32 SPECIAL APPEARANCE OF SOCIETE GENERALE.

Filed October 7th, 1910.

United States District Court, Eastern District of Louisiana.

J. A. E. Pyle, Trustee,
vs. No. 14243
Texas Transport and Terminal Company, et als.

Special and Qualified Appearance of Societe Generale.

The Societe Generale, made one of the defendants herein, now, through its undersigned solicitors, files this its special appearance herein, reserving the right to object to the jurisdiction of this Court to grant the relief herein sought by complainant, and appearing under protest specially and solely

for said purpose and for the protection of its right to and in respect to the cotton mentioned in said complaint.

(Signed) DENEGRE & BLAIR,
Solicitors.

October 7th, 1910.

To the Clerk of the Said Court:

Please enter the above special and qualified appearance of the Societe Generale.

(Signed) DENEGRE & BLAIR,
Solicitors for the above named Defendant.

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33 HEARING ON APPLICATION FOR INJUNCTION PENDENTE LITE, AND CONTINUANCE.

Extract From the Minutes.

May Term, 1910.

New Orleans, Monday, November 7th, 1910.

Court met pursuant to adjournment.

Present: Hon. Rufus E. Foster, Judge.

J. A. E. Pyle, Trustee,
vs. No. 14,243
Texas Transport and Terminal Company et als.

The application for an injunction pendente lite herein, fixed for hearing this day, was called:

Present: Messrs. Saunders, Dufour & Dufour, Solicitors for Complainant.

Present: George H. Terriberry, Esq., Solicitor for Texas Transport & Terminal Co., et als., Defendants.

Present: Messrs. Denegre & Blair, Solicitors for Societe Generale, Defendant.

Whereupon, on motion of solicitors for complainant,

It is ordered that the application for an injunction pendente lite be continued until Monday, November 21st, 1910, at 11 A. M., and that the restraining order heretofore issued herein remain in force until the further order of the Court.

34 HEARING ON APPLICATION FOR INJUNCTION PENDENTE LITE, AND CONTINUANCE.

Extract From the Minutes.

November Term, 1910.

New Orleans, Monday, November 21st, 1910.

Court met.

Present: Hon. Rufus E. Foster, Judge.

J. A. E. Pyle, Trustee,

vs. No. 14,243

Texas Transport and Terminal Company, et als.

The application for an injunction pendente lite herein, set for hearing this day, was called:

Present: Messrs. Saunders, Dufour & Dufour, Solicitors for Complainant.

Present: George H. Terriberry, Esq., Solicitor for Texas Transport & Terminal Co., et als,, Defendants.

Present: Messrs. Denegre & Blair, Solicitors for Societe Generale, Defendant.

Whereupon, on motion of the solicitors for the parties in interest,

It is ordered that the hearing of said application be continued until Friday, December 2nd, 1910, at eleven o'clock A. M.

It is further ordered, on motion of solicitors for complainant, that the restraining order heretofore issued herein remain in force until the further order of the Court.

35 HEARING ON APPLICATION FOR INJUNCTION PENDENTE LITE, IN PART AND CONTINUANCE.

Extract From the Minutes.

November Term, 1910.

New Orleans, Friday, December 2nd, 1910.

Court met pursuant to adjournment.
Present: Hon. Rufus E. Foster, Judge.

J. A. E. Pyle, Trustee,
vs. No. 14,243
Texas Transport and Terminal Company et als.

The application for an injunction pendente lite herein, set for hearing this day, was called:

Present: Messrs. Saunders, Dufour & Dufour, Solicitors for Complainant.

Present: George H. Terriberry, Esq., Solicitor for Texas Transport & Terminal Co., et als., Defendants.

Present: Messrs. Denegre & Blair, Solicitors for Societe Generale, Defendant.

Whereupon the solicitors for the respective parties filed notes of evidence in their behalf.

After hearing argument in part, it was ordered by the Court that the cause be continued until Saturday, December 3rd, 1910, at ten o'clock A. M., for further argument.

86 NOTE OF EVIDENCE ON BEHALF OF COMPLAINANT.

Filed December 2nd, 1910.

United States District Court, Eastern District of Louisiana.

J. A. E. Pyle, Trustee,
vs. No. 14,243
Texas Transport & Terminal Company et als.

Note of Evidence on Behalf of Complainant.

Solicitors for complainant offer, produce and file in evidence:

(1) Affidavit of Elmer E. Clark, business manager of the New Orleans Item, a daily newspaper published in the City of New Orleans, which affidavit is sworn to before Ross E. Breazeale, notary public, on November 16, 1910, to which is attached copy of advertisement of order of Court.

(2) Affidavit of C. H. G. Linde, taken before John Janvier, notary public, on December 2, 1910, together with the exhibit attached thereto, said exhibit containing a memorandum of 2498 bales of cotton together with their marks, etc.

(3) Affidavit of Edward S. Elliot, taken before John Janvier, notary public, on December 2, 1910, together with exhibit thereto attached and statement showing dealings of Steele, Miller & Company with the Bank de Mulhouse, Comptoir Escompte de Mulhouse, Paul Chardin and Societe Generale.

(4) Affidavit of William C. Dufour, taken before John Janvier, notary public, of date November 28, 1910, together with exhibits thereto, said exhibits being two copies of the Havre Bulletin, of date April 27 and 28, inclusive.

(5) Affidavit of William C. Dufour, before John Janvier, notary public, on November 25, together with exhibit at-

tached thereto, said exhibit being a copy of the Liverpool Daily Post, of date November 27, 1910.

(6) Affidavit of Andre Lafargue, taken before John Janvier, notary public, on November 25, 1910, together
37 with exhibits attached thereto, said exhibit being testimony of W. H. Hendren, taken before the Hon. William A. Bell, referee in bankruptcy.

(7) Affidavit of Andre Lafargue, taken before John Janvier, notary public, on November 25, 1910, together with exhibit thereto, said exhibit being the testimony of J. D. Hardin, taken before the Hon. William A. Bell, referee in bankruptcy.

(8) Affidavit of William C. Dufour, taken before John Janvier, notary public, on December 2, 1910, together with an exhibit thereto attached, said exhibit being a certified copy of the petition filed in the matter of Cohn & Company vs. Steele, Miller & Company in the United States Circuit Court, for the State of Mississippi, together with a certified copy of the judgment appointing the receiver for the firm of Steele, Miller & Company.

The entire proceeding, including petition for adjudication in involuntary bankruptcy, order appointing J. A. E. Pyle temporary receiver, and judgment adjudicating Steele, Miller & Company, and the individual members thereof involuntary bankrupts, together with the order appointing J. A. E. Pyle trustee of Steele, Miller & Company, and the individual members thereof, and a certified copy of the bond of said J. A. E. Pyle, same being embraced in the matter entitled Knoop Fabarius & Company, et als., vs. Steele, Miller & Company, No. 123 of the docket of the United States District Court for the Northern District of Mississippi, same bring [being] embraced in the ancillary proceedings No. 1430 of the docket of this Court, entitled Knoop Fabarius, et als., vs. Steele, Miller & Company.

38 United States District Court, Eastern District of Louisiana, New Orleans Division.

J. A. E. Pyle, Trustee,
vs. No. 14,243
Texas Transport & Terminal Company, et als.

Note:—
Evidence offered and filed on behalf of the complainant, and referred to in his note of evidence, copied into the Transcript of Appeal in the case of J. A. E. Pyle, Trustee, vs. Texas Transport & Terminal Company, et als., No. 14,240 of the docket of the United States District Court, Eastern District of Louisiana, New Orleans Division, in accordance with the Praecipe for Transcript of Appeal.

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39 NOTE OF EVIDENCE OF TEXAS TRANSPORT & TERMINAL COMPANY AND COMPAGNIE GENERALE TRANSATLANTIQUE.

Filed December 2nd, 1910.

In the District Court of the United States for the Eastern District of Louisiana.

J. A. E. Pyle, Trustee,
vs. No. 14,243
Texas Transport & Terminal Company, et als.. Including Societe Generale.

Note of evidence on behalf of Texas Transport & Terminal Company and Compagnie Generale Transatlantique, defendants herein, on the trial of the rule to show cause why an injunction pendente lite should not be issued.

Counsel for the above named defendants, offers, reads, and files in evidence the following affidavits and exhibits:

(1) The affidavit of William H. Hendren, local manager of Texas Transport & Terminal Company, agent for Com-

pagnie Generale Transatlantique, sworn to before Charles F. Fletchinger, notary public, Parish of Orleans, State of Louisiana, November 7, 1910.

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40 United States District Court, Eastern District of Louisiana, New Orleans Division.

J. A. E. Pyle, Trustee,
versus No. 14,243
Texas Transport & Terminal Company, et als.

Note:—

Evidence offered and filed on behalf of the Texas Transport & Terminal Company and Compagnie Generale Transatlantique, and referred to in their note of evidence, copied into the Transcript of Appeal in the case of J. A. E. Pyle, Trustee, vs. Texas Transport & Terminal Company, et als., No. 14,240 of the docket of the United States District Court, Eastern District of Louisiana, New Orleans Division, in accordance with the Praecipe for Transcripts of Appeal.

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41 NOTE OF EVIDENCE ON BEHALF OF THE SOCIETE GENERALE ON RULE FOR INJUNCTION PENDENTE LITE.

Filed December 2, 1910.

United States District Court, Eastern District of Louisiana.

J. A. E. Pyle, Trustee,
vs. No. 14243
Texas Transport and Terminal Company, et als.

Note of Evidence on Behalf of Societe Generale, Defendant Herein, on the Trial of the Rule to Show Cause Why an Injunction Pendente Lite Should Not Be Issued.

Counsel for the above-named defendant offers, reads and files in evidence the following affidavits and exhibits:

1. The affidavits of Frans Luzell, director of the Bank of Mulhouse; of Elisee Paul Dubois, managing director of the Societe Generale; of Emile Level, managing director of the Comptoir d'Escompte de Mulhouse; and of Alphonse Riss, manager of the firm of Paul Chardin, in Havre, all sworn to before John Preston Beecher, Vice Consul of the United States, at Havre, France, on October 24, 1910.

2. Affidavit of J. P. Blair before Henry H. Chaffe, notary public, November 9, 1910, and copies of the four drafts annexed to said affidavit purporting to be the drafts referred to in the affidavit of said———

3. Affidavit of J. P. Blair before Henry H. Chaffe, notary public, November 9, 1910, and the exhibits annexed thereto, namely, duplicate copies of the four through bills of lading and the four custody bills of lading referred to in the affdavit of

4. Affidavit of J. P. Blair, sworn to before Henry H. Chaffe, notary public, November 9, 1910, and the exhibits annexed thereto, namely, one note from Scheuch and Company, dated April 26, 1910, and purporting to transmit to the Societe Generale four certain custody bills of lading therein mentioned, and purporting to be the notes referred to in the said affidavit of Elisee Paul Dubois.

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5. Affidavit of Albert Schilling of November 18, 1910, with the two letters of December 8th and 23rd, 1909, embodied therein.

6. Affidavits of Frans Lyzell, Elisee Paul Dubois and Emile Level before John Preston Beecher, U. S. Vice Consul, November 18, 1910.

7. Affidavits of Albert Schilling and of Ferd. Scheuch, entitled and numbered in this cause before the said John Preston Beecher, U. S. Vice-Consul, November 18, 1910.

43 United States District Court, Eastern District of Louisiana, New Orleans Division.

J. A. E. Pyle, Trustee,
versus No. 14,243
Texas Transport & Terminal Company, et als.

Note:—
Evidence offered and filed on behalf of the Societe Generale, and referred to in its note of evidence, copied into the Transcript of Appeal in the case of J. A. E. Pyle, Trustee, vs. Texas Transport & Terminal Company, et als., No. 14,240 of the docket of the United States District Court, Eastern District of Louisiana, New Orleans Division, in accordance with the Praecipe for Transcripts of Appeal.

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44 RESUMED HEARING ON APPLICATION FOR INJUNCTION PENDENTE LITE.

Extract From the Minutes.

November Term, 1910.

New Orleans, Saturday, December 3rd, 1910.
Court met pursuant to adjournment.
Present: Hon. Rufus E. Foster, Judge.

J. A. E. Pyle, Trustee,
vs. No. 14,243
Texas Transport and Terminal Company, et al.

The hearing of this cause, as continued from Friday, December 2nd, was this day resumed.
Present: The solicitors for all parties in interest.
Whereupon, after hearing further argument, the cause was submitted, and taken under advisement.

45 DECREE ON APPLICATION FOR INJUNCTION.

Extract From the Minutes.

November Term, 1910.

New Orleans, Monday, January 2nd, 1911.

Court met pursuant to adjournment.

Present: Hon. Rufus E. Foster, Judge.

J. A. E. Pyle, Trustee,

vs. No. 14,243

Texas Transport and Terminal Company, et al.

This cause came on to be heard at this term upon the application of complainant for an injunction pendente lite, and was argued by the solicitors for the respective parties, and submitted, when the Court took time to consider.

Upon due consideration whereof, and for the reasons assigned in writing, and on file in Cause No. 14,240 of the docket of this Court,

It is ordered that an injunction pendente lite issue herein as prayed for.

46 INJUNCTION ISSUED.

January 2, 1911.

United States of America.

District Court of the United States, Eastern District of Louisiana.

J. A. E. Pyle, Trustee,
vs. No. 12,243
Texas Transport & Terminal Company, et als.

The President of the United States of America,

To the Texas Transport & Terminal Company and the Compagnie Generale Transatlantique—Greeting:

Whereas, it has been represented unto us in our said District Court on the part of J. A. E. Pyle, trustee in bankruptcy of Steele, Miller & Company, in a bill in equity lately exhibited against you, and each of you, touching certain matters and things therein set forth.

Now, therefore, in consideration of the premises and of the allegations in said bill in equity contained, you, the said Texas Transport & Terminal Company and the said Compagnie Generale Transatlantique, your attorneys and each of you, are hereby commanded and strictly enjoined, under the penalty of the law, that you absolutely refrain and desist from removing from the jurisdiction of this Court the 400 bales of cotton described in the bill filed in this cause, and that you remain so inhibited and enjoined until the further order of our said Court in the premises.

Witness, the Honorable Rufus E. Foster, Judge of said Court, at the City of New Orleans, this second day of January, in the year of our Lord, 1911.

[Seal] (Signed) FRANK H. MORTIMER,
Clerk.

Clerk's Office:
A true copy.
[Seal] (Signed) FRANK H. MORTIMER,
Clerk.

47 [Indorsed on back:] No. 14243. U. S. District Court, Eastern District of Louisiana, New Orleans Division. J. A. E. Pyle, Trustee, vs. Texas Transport & Terminal Company, et als. Injunction to Texas Transport & Terminal Co. and Compagnie Generale Transatlantique.

MARSHAL'S RETURN ON INJUNCTION.

Filed January 3rd, 1911.

Received by U. S. Marshal, New Orleans, La., Jan. 3/11.
And on the same day, month and year I served the original, of which this writ is a certified copy, on the Texas Transport and Terminal Company by handing the same to the agent thereof, Mr. W. H. Hendren, in person, in the office of said company, in the City of New Orleans, Louisiana; and on the Compagnie Generale Transatlantique by handing the same to the agent thereof, Mr. N. P. Pedrick, in person, in the City of New Orleans, La.

VICTOR LOISEL,
U. S. Marshal.
(Signed) By E. M. KINLER,
Deputy U. S. Marshal.

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48 MOTION FOR EXTENSION OF TIME AND ORDER.

Extract From the Minutes.

November Term, 1912.

New Orleans, Monday, January 2nd, 1911.
Court met pursuant to adjournment.
Present: Hon. Rufus E. Foster, Judge.

J. A. E. Pyle, Trustee,
vs. No. 14,243
Texas Transport and Terminal Company, et al.

Now through its solicitors, Denegre & Blair, comes Societe

Generale, and still appearing specially and qualifiedly, under protest, and not waiving but reserving its right to object to the jurisdiction of this Court, asks the Court to grant it an extension of time until the next rule day in February to file its exceptions to the jurisdiction or such other responsive pleadings as it may desire to file in this cause.

The foregoing motion having been presented to the Court, it is ordered that the same be and it is allowed.

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49 MOTION TO SELL COTTON.

Filed January 4, 1911.

United States District Court, Eastern District of Louisiana.

J. A. E. Pyle, Trustee,
vs. No. 14,243
Texas Transport & Terminal Company, et als.

On motion of Dufour & Dufour and W. A. Percy, solicitors for complainant herein, and on suggesting to the Court that, on the —— day of May, 1910, at the suit of J. A. E. Pyle, receiver, the Texas Transport & Terminal Company and the Compagnie Generale Transatlantique were enjoined from removing from the jurisdiction of this Court certain cotton marked as follows:

100 bales Q M T A
100 bales Q P L H
100 bales R D F E
100 bales Q R T Y

which said cotton was then loaded on the steamship "Texas;" and

On further suggesting that on the 16th day of August, in the within numbered and entitled cause and on the application of mover as trustee, this Honorable Court did grant a restraining order against the Texas Transport & Terminal Company and the Compagnie Generale Transatlantique, their agents and employees, prohibiting them from removing from the

jurisdiction of the Court the cotton herein referred to until the application for the interlocutory injunction prayed for could be determined; and

On further suggesting to the Court that on the 2nd day of January, 1911, this Court granted the application for said interlocutory injunction and directed the issuance of said preliminary injunction against the said Texas Transport & Terminal Company and the Compagnie Generale Transatlantique; and

On further suggesting to the Court that the original orders, entered herein on the application of the temporary receiver and on the application of the trustee, gave to all parties at interest the right to apply to this Court for permission to bond said cotton or to otherwise dispose of same, but that the defendants herein, to-wit, Scheuch & Company and the Societe Generale, have failed to avail themselves of said privilege and right, and that the said Scheuch & Company has not entered any appearance and that the Societe Generale has only entered a limited appearance for the purpose of contesting the jurisdiction of the Court and objecting to the issuance of the preliminary injunction; and

On further suggesting that the Compagnie Generale Transatlantique and the Texas Transport & Terminal Company have appeared in this cause and pleaded and asked to be relieved of the charge for the said cotton; and

On further suggesting that the cotton herein should be sold and the proceeds deposited in the registry of the Court:

It is ordered, That the Texas Transport & Terminal Company and the Compagnie Generale Transatlantique, through their solicitor, Mr. George H. Terriberry, show cause on the 6th day of February, 1911, why the cotton in contest herein should not be sold and the proceeds deposited in accordance with the orders of this Court.

It is further ordered, That the Societe Generale through its solicitors, Messrs. Denegre & Blair, be served with a copy of this motion.

51 MARSHAL'S RETURN ON MOTION TO SELL COTTON.

Filed January 6, 1911.

Received by U. S. Marshal, New Orleans, La., Jan. 5/11. And on the 6th day of same month I served copy hereof on Denegre & Blair, by leaving same in their office in N. O., in the hands of their stenographer, Chas. P. Gould; on Geo. H. Terriberry, by leaving same at his office in the hands of F. E. Zimmerman, his Clerk.

(Signed) VICTOR LOISEL,
U. S. Marshal.

(Signed) By B. F. QUEEN, Dy.

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52 BOND OF TRUSTEE ON INJUNCTION PENDENTE LITE.

Filed January 9th, 1911.

United States District Court, Eastern District of Louisiana.

J. A. E. Pyle, Trustee,
vs. No. 14,243
Texas Transport & Terminal Company, et als.

Know All Men By These Presents: That we, J. A. E. Pyle, trustee of Steele, Miller & Company, bankrupt, appointed by and acting under authority of the District Court of the United States for the Northern District of Mississippi, as principal, and Southwestern Surety Insurance Company of Oklahoma, as surety, are held and firmly bound unto the Compagnie Generale Transatlantique, the Texas Transport & Terminal Company, P. Scheuch & Company and Societe Generale, defendants herein, for the use and benefits of defendants in the below mentioned suit, in the full and true sum of seventeen hundred dollars ($1,700.00) lawful money of the United States of America, for the payment whereof we bind ourselves, our heirs, executors, successors and assigns firmly by these presents.

Thus done and signed, in the City of New Orleans, State of Louisiana, this 9th day of January, A. D. 1911.

Now, therefore, the condition of the above obligation is such that

Whereas, the said J. A. E. Pyle, trustee in bankruptcy of Steele, Miller & Compagnie, did in the proceedings No. 14,243, of the docket of the United States District Court for the Eastern District of Louisiana, entitled J. A. E. Pyle, Trustee, vs. Texas Transport & Terminal Company, et als., obtain an injunction pendente lite, restraining and enjoining the Texas Transport & Terminal Company and the Compagnie Generale Transatlantique, and each of them, and each of their servants, agents and employes, until further orders of the Court from removing from the jurisdiction of the
53 Court the 400 bales of cotton described in the pleadings filed in this cause upon condition that the said trustee shall furnish bond.

Now, therefore, if the above mentioned J. A. E. Pyle, trustee, shall pay, or cause to be paid, all damages caused by the issuance of said injunction pendente lite, and the costs of this cause in connection therewith in the event that said injunction pendente lite is dissolved or vacated as having been wrongfully issued, or because the said acts are improperly enjoined, then this bond to be void, otherwise to remain in full force and effect.

J. A. E. PYLE, Trustee.

(Signed) By WM. C. DUFOUR, Solicitor.

SOUTHWESTERN SURETY INSURANCE CO.

(Signed) By JOS. BAYLE, Atty in Fact. [Seal]

Approved.

(Signed) RUFUS E. FOSTER, Judge.

54 DEMURRER TO JURISDICTION.

Filed January 10th, 1911.

United States District Court, Eastern District of Louisiana.

J. A. E. Pyle, Trustee,
vs. No. 12,243
Texas Transport & Terminal Company, et als.

Now, comes Societe Generale, made a defendant herein, and appearing specially under protest for the purpose of demurring to the jurisdiction of this Court, and for no other purpose, says that the Court is without jurisdiction in this cause for the following reasons:

That it appears from the bill of complaint that this is a suit brought under Section 60, Subdivisions a and b of the Bankruptcy Act of the United States, being the Act of Congress adopted July 1, 1898, and its amendments, to set aside the alleged voidable transfer to this defendant of the certain cotton described in the bill of complaint; that it further appears from said bill that this defendant, the transferee, is not a citizen or inhabitant or resident of this State or of the United States, but is a citizen, inhabitant and resident of the Republic of France, and that he has not been personally cited or served with any process of Court in this cause; that it is not shown by the said bill that any of its co-defendants has any authority to stand in judgment for this defendant; that the bill fails to state a case within the jurisdiction of this Court to give the relief, either interlocutory or final, prayed for by complainant.

Wherefore, defendant prays that its demurrer be sustained and this cause dismissed, with reservation of this defendant's rights to recover its costs and all damages sustained from the injunctive orders heretofore rendered in this cause.

(Signed) DENEGRE & BLAIR,
Sols. for above named Defendant.

55 J. P. Blair, being duly sworn, deposes and says that he is of counsel for the said Societe Generale, which is absent from the State and unrepresented save by its said counsel and solicitors of record; that the foregoing

demurrer was not filed for purposes of delay; and affiant further states and certifies that in his opinion said demurrer is good in point of law.

(Signed) J. P. BLAIR.

Sworn to and subscribed before me this 10th day of January, 1911.

[Seal] (Signed) HENRY H. CHAFFE,
Notary Public.

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56 HEARING AND ORDER—DEMURRER OVERRULED.

Extract From the Minutes.

November Term, 1910.

New Orleans, Friday, January 13th, 1911.

Court met pursuant to adjournment.

Present: Hon. Rufus E. Foster, Judge.

J. A. E. Pyle, Trustee,
vs. No. 14,243
Texas Transport and Terminal Company, et al.

The demurrer filed by the Societe Generale, a defendant herein, set for hearing this day, was called:

Present: Messrs. Dufour & Dufour, Solicitors for Complainant.

Present: Messrs. Denegre & Blair, Solicitors for Societe Generale, Defendant.

Whereupon, after hearing the solicitors for the respective parties,

It is ordered that the said demurrer be, and it is hereby overruled.

57 ANSWER OF THE SOCIETE GENERALE.

Filed February 6, 1911.

United States District Court, Eastern District of Louisiana.

J. A. E. Pyle, Trustee,
vs. No. 14,243
Texas Transport and Terminal Company, et als.

Answer of the Societe Generale.

Now comes the Societe Generale, made one of the defendants herein, and, not waiving but reserving benefit of its demurrer hereto filed to the jurisdiction of this Court and not consenting to but protesting against the exercise of jurisdiction in this cause, this defendant, now and at all times saving to itself any and all manner of benefit or advantage of exception or otherwise that can or may be had or taken to the many errors, uncertainties and imperfections in the said bill contained, for answer thereto, or to so much thereof as this defendant is advised it is material or necessary for it to make answer to, answering says:

1. It admits and avers that this defendant is and was at all times hereinafter set forth, and for some time prior thereto, a banking institution duly incorporated and existing under the laws of the Republic of France, domiciled and engaged in the banking business in the City of Havre, France, including the purchase of cotton, as well as the furnishing and advancing of funds for the purchase thereof, and taking and holding title thereto.

2. It says that, for want of sufficient information, it can neither admit nor deny the allegations contained in paragraphs "Second" and "Third" of the complaint in respect to the domicile, membership and business of the firm of Steele, Miller & Company, the institution of proceedings of involuntary bankruptcy against said firm, the adjudication of bankruptcy, the appointment of complainant as receiver and his subsequent election as trustee in bankruptcy, and it
58 leaves complainant to his proof thereof.

3. It denies the statement contained in paragraph "Fourth" of the complaint, that on or prior to April 15, 1910, the relations between Steele, Miller & Company and this defendant were those of debtor and creditor, Steele, Miller & Company being indebted to it in the sum of 154,238.95 francs or $29,604.40, United States currency; it avers that it extended no credit and made no loans of money to Steele, Miller and Company, and that the obligation of Steele, Miller and Company on the date above named and prior thereto was not to pay this defendant a sum of money, but to deliver or cause to be delivered to it four hundred bales of cotton which this defendant had already paid for, as will hereafter be more fully set forth.

It avers that it is not familiar with the fraudulent practices of Steele, Miller and Company, and is unable to affirm or deny the correctness of the statements in respect thereto found in paragraph "Fourth" of the complaint, and leaves complainant to his proof thereof.

It admits and avers that sales and purchases of cotton are usually made and effected by the drawing and acceptance of drafts with bills of lading covering the cotton attached thereto; it avers that such drafts are accepted and paid under the belief that the title to and possession of the cotton so sold and purchased are vested in the acceptor by such acceptance and the delivery of the bill of lading.

4. It admits that the statements contained in paragraph "Fifth" of the complaint and Exhibit A thereof are substantially correct. It avers that each of said drafts represented the purchase price of a lot of 100 bales of cotton and an identifying description of said cotton by lot numbers and marks was set forth on the face of the drafts, the same corresponding with the description in the bill of lading attached thereto. It denies that said drafts were accepted and paid by it for the purpose of "buying the bills of lading thereto attached," as charged in said paragraph "Fifth," and avers that the same were accepted and paid for the purpose of buying
59 the cotton described in the drafts as well as in the bills of lading and for the purpose of obtaining the bills of lading which it believed represented the cotton and the possession of which it believed gave it the title to and full dominion over the cotton; that it believed at the time that

the bills of lading were genuine and that the cotton described therein and in the drafts had been actually shipped at or about the dates of said drafts, but, that from information received subsequent to May 7, 1910, and chiefly as a result of the investigations made in said bankruptcy proceedings, it now believes that said bills of lading were forgeries, and that Steele, Miller and Company thus fraudulently deceived this defendant into believing that at the same time that it paid for the cotton by acceptance of the drafts, it was receiving symbolically title to and possession of the cotton. It denies that it thus became a creditor of Steele, Miller and Company in a sum representing the amount of said drafts; it avers, on the contrary, it became entitled to demand and receive from Steele, Miller and Company the four hundred bales of cotton which had been paid for by said drafts, and Steele, Miller and Company were legally bound to make good their default by securing, marking, forwarding and delivering to this defendant the cotton covered by said drafts and purporting to be covered by said spurious bills of lading.

5. It admits that the statements contained in paragraph "Sixth" of the complaint, in respect to the business of Scheuch and Company, are substantially correct, except the statement that the four hundred bales of cotton referred to in the complaint were sold to Scheuch and Company. It believes, and so avers, that the legal and intended effect of the transactions in respect to said cotton was a transfer of the title and of full dominion over the same to this defendant who was the party that paid the seller the purchase price; that it is not material for the purposes of this suit, whether the ultimate purchaser was this defendant or Scheuch and
60 company, since, in any event, Steele, Miller and Company, agreed and bound itself to sell and deliver the said cotton, received the price thereof, and, by subsequently shipping the cotton in question, simply carried out its aforesaid original obligations, and completely divested itself of the ownership and possession of said property.

For want of sufficient information it neither admits nor denies the statements in said paragraph "Sixth," in respect to the insolvency of Steele, Miller and Company prior to April 1, 1910, and the issuance and negotiations by it of drafts with spurious bills of lading attached thereto to other persons in

various parts of the world in an amount approximating 3,000,000 of dollars, and leaves complainant to his proof thereof. It specially denies that it knew of, or had any reasonable ground for suspecting, said insolvency or said fraudulent practices.

6. It admits that it is substantially correct, as stated in paragraph "Seventh" of the complaint, that on or about March 23rd, 1910, Steele, Miller and Company had collected and had in its possession 400 bales of cotton marked as stated in the complaint, which marks correspond with the marks of the cotton on the said drafts and the bills of lading attached thereto, and that said cotton was then shipped by Steele, Miller and Company under through inland bills of lading to the order of Steele, Miller and Company, and that when said cotton reached New Orleans, the said through bills of lading were exchanged for ocean bills of lading, on or about April 15, 1910, which two sets of bills of lading in respect to the marks of the cotton covered thereby, the dates, etc., are described with substantial correctness in exhibits B and C of the complaint; but this defendant asks leave to refer for greater certainty to said bills of lading or proven copies thereof which may be produced on the trial. It does not know, and has no means of knowing, how long prior to March 23, 1910, Steele, Miller and Company had acquired, assembled and marked said cotton; and for want of sufficient
61 information it cannot admit or deny the statement in said paragraph "Seventh" that the cotton was only delivered to the inland carrier on March 23, 1910, and that the said inland through bills of lading were collusively back dated so as to show delivery on February 7, 1910. It avers, however, that if said back-dating occurred as alleged, the object thereof was more effectually to keep this defendant in ignorance of the failure of Steele, Miller & Company to ship said cotton contemporaneously with the drawing of drafts for the price thereof.

It avers that the acquiring, assembling and marking of said cotton, as aforesaid, had for its intended and legal effect to appropriate said cotton to the obligations of Steele, Miller and Company under the said original transaction with this defendant, whereby it paid for said cotton and became entitled thereto; that the further legal and intended effect of said acts

of Steele, Miller & Company was to give to this defendant the same right, title and interest in and to said cotton as it would have had if said cotton had been originally shipped under the original bills of lading attached to the drafts as aforesaid.

It avers that it did not know and had no reason to believe or suspect, until the fraudulent practices of Steele, Miller and Company were disclosed to it through the said bankruptcy proceedings some time subsequent to May 7, 1910, that said cotton had not been shipped contemporaneously with the drawing of said drafts; and, accordingly, it avers that the subsequent acts of Steele, Miller and Company to make good its default, perform its obligations, and deliver to this defendant the cotton it had paid for and was entitled to receive, were done and accomplished without its procurement of knowledge.

7. It again denies that on or about April 15, 1910, this defendant and Scheuch and Company, or either of them, were ordinary unsecured creditors of Steele, Miller and Company in the sum of $29,604.40, represented by the said
62 drafts with the forged bills of lading attached, and again avers that the obligations of Steele, Miller and Company was to deliver 400 bales of cotton, not to pay a certain sum of money. It admits that on or about April 15th, 1910, Steele, Miller and Company deposited in the United States mail said ocean or port bills of lading, representing said 400 bales of cotton, addressed to Scheuch and Company. It avers that said bills of lading were negotiable in form, to the order of Steele, Miller and Company and by it indorsed in blank, and represented said cotton; that said bills of lading were mailed to Scheuch and Company for this defendant and that the deposit of said bills of lading in the mail operated at once a transfer of the title to and possession of said cotton to this defendant; that the acts of Steele, Miller & Company in obtaining and forwarding said port bills of lading was in furtherance of said acts of appropriation and a performance and consummation of their original obligations in the premises. It avers that said port bills of lading were delivered into its physical possession by Scheuch and Company on April 26, 1910, and it has ever since had possession thereof, as well as of the bills of lading attached to said drafts.

It denies that the forwarding to it by Steele, Miller and Company of said port bills of lading was done with the intent to prefer it or Scheuch and Company, or either of them, over the other creditors of Steele, Miller and Company. It denies that when said bills of lading were mailed to Scheuch and Company for this defendant, or when the same were received and delivered to this defendant, it knew or ought to have known, or had reasonable cause to believe that a preference was thereby given and intended, or knew or had reasonable cause to believe that Steele, Miller and Company was insolvent. It denies that the performance by Steele, Miller & Company, as aforesaid, of its obligations to deliver the cotton which it had agreed to deliver and which it had been paid for constituted any preference within the meaning of the Bankruptcy Act. It denies that it constituted any avoid-
63 able preference in favor of this defendant, for the additional reason that it was unaware at the time of the acts of Steele, Miller and Company now charged to constitute a preferential transfer, and because it believed and had reasonable cause to believe at the time that the cotton, the transfer of which to it is now sought to be avoided, was cotton shipped at the time of the drawing of said drafts, had been fully paid for by it, belonged to it, and that it was justly and exclusively entitled thereto.

For want of sufficient information it neither affirms nor denies the statements contained in said paragraph "Eighth" in respect the [to] the insolvency of Steele, Miller and Company, and leaves complainant to his proof thereof. It denies that it knew or should have known at the time of the transfer to it of said cotton that Steele, Miller and Company was insolvent. It avers that even knowledge of such insolvency would not have given it reasonable cause to believe that it was being given a preference, because, as it again states, it was unaware of the original default and subsequent acts done to make good the default, and because, had it known thereof, it would still reasonably have believed that it was justly entitled to the cotton it had paid for, whether Steele, Miller and Company was insolvent or not at the time of the shipment thereof.

8. It admits that the statements contained in paragraph "Ninth" of the complaint are substantially correct, but it asks

leave to refer to the proceedings in said Cause No. 14,219 of Pyle vs. Philip Landgren, for greater certainty as to the location of the cotton at the date of the institution of said cause and as to its subsequent disposition.

It avers that said bills of lading issued by the Compagnie Generale Transatlantique stated that the four hundred bales of cotton would be transported by the steamship "Louisiana," (one of said Company's said vessels), or failing ship-
64 ment by said steamer, in and upon a following steamer; that, by error of said steamship line or for some reason unknown to this defendant, said cotton was not loaded on board the said steamship "Louisiana," which sailed from this port on or about May 1, 1910, but was loaded on the steamship "Texas"' which has been prevented by the said injunctive orders of this Court from transporting the same to Havre and delivering the same to this defendant as the holder of the bills of lading therefor.

9. Further answering this defendant says that for more than three years past Steele, Miller & Company has been engaged in the business, among other things, of selling cotton to or through Scheuch and Company, a commercial firm, which is now, and was at all times hereafter set forth, and for some time prior thereto, domiciled and engaged at Havre, France, in the business of buying, selling and importing cotton; that, according to the regular course of business, cotton, the sale of which had been negotiated, would be shipped by Steele, Miller & Company under through bills of lading to Shippers' order notify Scheuch and company, each of which bills of lading, being for one hundred bales, indorsed in blank by shippers, would be forwarded to Havre attached to a draft for the full price of the cotton covered thereby (less freight, insurance and six per cent. loss in weight) drawn by Steele, Miller and Company on some bank in Havre which had agreed to take and pay for said cotton, the cotton being described in the draft, as well as in the bill of lading, by number of bales and marks, which is the customary method of describing and identifying lots of cotton intended to be sold; that said documents would be presented to the drawee bank in France by some third person for Steele, Miller and Company, and it was the intended legal effect of the acts and doings of the parties in the premises that, on the acceptance of any such drafts

(the same being sixty or ninety days drafts) title to the cotton, described as aforesaid in the draft and in the bill
65 of lading, should thereupon become vested in the person obligating himself by such acceptance to pay the price thereof, and the indorsed bill of lading was surrendered at the time to the acceptor of the draft as one of the means of transferring title and possession and as evidence thereof, and to enable the holder to obtain possession of the cotton from the carrier on arrival at Havre. That during the period aforesaid of upwards of three years many thousands of bales of cotton were so shipped and disposed of by Steele, Miller and Company, and paid for and possession thereof secured by through bills of lading and drafts as aforesaid, there being always attached to the bill of lading a certificate of insurance and an invoice showing correspondence of the amount of the draft with the price of the cotton, and in many of said transactions this defendant, the Societe Generale, was the drawee of the draft and accepted and paid the same and received the cotton in due course from the ocean carrier on surrender of the bill of lading.

That, in the regular course of business which had been going on as aforesaid for a number of years, Steele, Miller and Company, on February 8, 1910, drew on this defendant, the Societe Generale, four certain drafts, each dated at Corinth, Mississippi, to drawers' order and by them indorsed in blank, payable ninety days after sight:

One numbered 2178, for 38,607.70 francs, and reciting that it was drawn against 100 bales of cotton marked Q. M. T. A. 1/100;

One numbered 2179, for 38,684.15 francs, and reciting that it was drawn against 100 bales of cotton marked Q. P. L. H. 1/100;

One numbered 2180, for 38,909.35 francs, and reciting that it was drawn against 100 bales of cotton marked R D F E 1/100;

One numbered 2181, for 38,637.75 francs, and reciting that it was drawn against 100 bales of cotton marked Q R T Y 1/100.

That each of said drafts was presented to this
66 defendant at Havre for acceptance and was by it accepted on February 21, 1910, and was thereafter when it became due paid in full by this defendant; that there

was attached to each draft what purported to be a through bill of lading covering the same cotton described in the draft and an invoice showing correspondence between the amount of said draft and the price to be paid for the cotton, together with an insurance certificate in the usual form, all of which documents were surrendered to this defendant on the acceptance of the draft.

That, believing and relying upon the representations conveyed and the obligations imposed by the drawing and forwarding of said drafts, with the documents attached, and believing that said cotton had actually been shipped, and that acceptance of said drafts, as well as the possession and ownership of the bills of lading (obtained through such acceptance), would transfer to it the title to said cotton and the right to receive the same on its arrival, this defendant accepted said drafts (which it subsequently paid) and accepted the transfer and delivery of said bills of lading, with the attached certificate of insurance and invoices, which documents are still in its possession.

That no part of said cotton has ever come into the hands of this defendant except through the constructive delivery and possession effected by its holding and ownership of the bills of lading representing the same as herein set forth; that while it was awaiting the arrival of said cotton it received by mail from Steele, Miller and Company, through Scheuch and Company, on April 26, 1910, the four bills of lading issued as aforesaid by the Compagnie Generale Transatlantique acknowledging the receipt from Steele, Miller and Company of the said four lots of one hundred bales each, with the said identifying marks, for shipment to Havre and delivery there to shipper's order, notify Scheuch and Company, which bills of lading were indorsed in blank by Steele, Miller and Company, forwarded at or about the dates of their issu-
67 ance, and have ever since been, and now are, in the possession of this defendant. That the next news this defendant received concerning the said cotton was the cable report of the aforesaid proceedings instituted on May 7th, 1910, which resulted in the injunction restraining the master of the steamship "Texas" and its aforesaid owner and agent from removing said four hundred bales and other cotton out of the jurisdiction of this Court, on the ground that the shipment of said cotton by Steele, Miller and Company constituted

the giving or attempt to give a preference or an attempt to hinder and delay their creditors in violation of the Bankruptcy Laws of the United States; and this defendant learned from the report of said proceedings for the first time that it was alleged or charged that the original through bills of lading attached to the drafts paid by it were forgeries; and it then for the first time had reasonable cause to believe that the said four hundred bales of cotton which it had paid for, as aforesaid, had not been shipped on the dates it had until then believed the same to have been shipped, namely, February 1st and 3rd, 1910. This defendant accordingly avers that, if it be true that said bills of lading attached to said drafts were forged and spurious, and if Steele, Miller and Company did not deliver the cotton described therein to the said Railway Company at the dates of said bills of lading, but at a subsequent date, this defendant was in entire ignorance thereof, and never knew, and had no reasonable cause to believe, that it had been the victim of any such fraud until after the proceedings in this Court against Steele, Miller and Company had been instituted between May 7th and 13th, 1910, and brought to its attention; that until such proceedings it rested secure in the belief that the cotton it had paid for was on its way to Havre, and would be delivered to it on surrender of said through bills of lading.

That subsequent investigation, in the light of the
68 disclosures evoked by the bankruptcy proceedings of Steele, Miller and Company, has led this defendant to believe that said four hundred bales of cotton were not delivered to the said railroad company at the dates of said through bills of lading, February 1st and 3rd, 1910; and it avers that Steele, Miller and Company either had said cotton in its possession at the time or subsequently acquired the same for the purpose of delivering it to this defendant; and that at some time in February or March, 1910, Steele, Miller and Company marked said cotton, each lot of one hundred bales, to correspond with said drafts and attached documents, for the purpose and with the effect of appropriating the same to said drafts and to the rights of this defendant in the premises; and in further appropriation of said cotton and in further performance of their obligation to deliver the same to this defendant, from whom they had received full payment therefor, Steele, Miller and Company, as this defendant is informed and

believes, delivered each of said 100 bale lots of cotton so marked to the said Railroad Company at Columbus, Mississippi, for transportation to the Port of New Orleans, and thence by steamship of the "French Line" for transportation to Havre and delivery to this defendant.

That said cotton reached the Port of New Orleans some time prior to April 15, 1910; that Steele, Miller and Company then acting through their local agent or representative, delivered up the railroad bills of lading under which the cotton had been brought to New Orleans and received in exchange therefor the said bills of lading issued by the Compagnie Generale Transatlantique, as aforesaid, and transmitted the same to this defendant; that the actual and intended effect of the aforesaid acts and doings of Steele, Miller and Company was to deliver to this defendant the said four hundred bales of cotton, to the delivery of which it was entitled
69 and the purchase price of which it had fully paid, as long ago as February 21, 1910.

That the fact that the said original through bills of lading were forged or spurious did not destroy, or essentially alter the nature of, the rights and obligations of the parties; that Steele, Miller and Company became bound, if they did not have the cotton, to acquire the same and deliver it to this defendant, and this defendant became entitled to said cotton as soon as acquired and appropriated to the obligation arising out of the aforesaid transactions; that accordingly this defendant became entitled to said 400 bales of cotton as soon as Steele, Miller and Company made a definite and specific appropriation thereof in fulfillment of their aforesaid obligation, which was done as soon as that firm selected said four hundred bales of cotton and marked the same to correspond with said first set of railroad bills of lading and the drafts to which they were attached, and certainly was such appropriation effected when it subsequently delivered said cotton so marked to the carrier for transportation to New Orleans and thence to Havre, for the purpose of being delivered to this defendant, by whom the cotton had been already been fully paid for as aforesaid; and the delivery and transfer of said cotton to this defendant was consummated and perfected by the delivery of the same to the ocean carrier and the forwarding of said ocean bills of lading therefor to this defendant.

That, prior to the institution of said Cause No. 14,219, and

prior to any bankruptcy proceedings anywhere against Steele, Miller and Company, said firm had received payment in full for said cotton and had completely divested itself of the title, ownership and possession of said cotton, and the same had been completely vested, as aforesaid, in this defendant; that at the time when this defendant acquired its right or title to said cotton it did not know and had no reasonable ground for believing that a preference was being given or intended by the transfer to it of such right and title; that accordingly its right and title to said cotton is superior to that of the complainant trustee.

10. It avers that it has fully set forth the facts constituting the transactions between it and Steele, Miller and Company and that it has a right to ask this Honorable Court, as it now does, to define, recognize and enforce its rights in, to or in respect to said cotton; that whether it has the full and complete title thereto, as it is advised and so claims, or whether it has a qualified ownership or special property therein, or an equitable lien or charge or a right in the nature of a pledge, its rights or title to said cotton were not created by any voidable or preferential transfer, are superior to any rights or title of complainant, and entitle it to be awarded said cotton or its proceeds and to a dissolution of the restraining and injunctive orders heretofore issued in this cause, as well as in said cause No. 14,219.

11. It avers that by the procuring or issuing of said alleged spurious through railroad bills of lading for said cotton and forwarding the same to it with said drafts attached and accepting the proceeds of said drafts, Steele, Miller and Company warranted its title to said cotton and that the same had been delivered to the carrier for this defendant and is estopped to deny the same and is estopped to deny this defendant's right and title to the cotton after the same was selected, marked and appropriated as aforesaid, and this estoppal operates equally against the complainant trustee and the general creditors of Steele, Miller and Company and all other persons who are disputing this defendant's rights to said cotton.

12. This defendant respectfully submits that the restraining and injunctive orders issued in said cause No. 14,219 and

in this cause were improvidently ordered; that this Court is and was without jurisdiction to render the same or to give complainant the relief he seeks; that at the time of
71 the institution of the said cause No. 14,219 and of the present suit, the bankrupts, Steele, Miller and Company, had parted with both the ownership and the possession of the said four hundred bales; that neither the receiver nor the trustee in bankruptcy has or had any right to proceed in rem against said property; that his only remedy was and is a personal suit against the creditors alleged to have received the prohibited preference, and this Court has not, and never had, any jurisdiction in personam over this defendant; that the appearance which this defendant has been compelled to make under protest to protect its property as aforesaid should not be construed and cannot be construed as a voluntary appearance giving his Court full jurisdiction over it.

This defendant further submits that should this Court maintain its jurisdiction to decide upon the merits the issues presented herein, then this defendant is entitled to be awarded the said cotton or its proceeds.

This defendant specially reserves all its rights and claims against the owners and agents of said steamship "Texas" and steamship "Louisiana," and against said vessels, which it may have in the premises, and especially as the holder and owner of said four custody bills of lading.

Wherefore, this defendant prays that the said bill of complaint be dismissed for want of jurisdiction in this Court to grant the relief prayed for, the restraining orders and injunction heretofore issued being dissolved and a reference ordered to ascertain the damages this defendant has sustained by reason of said injunctive orders and its right to recover the same reserved.

And in the alternative, if its objections to the jurisdiction be overruled, this defendant prays that complainant's demands be rejected and that this defendant be decreed to be entitled to the within described four hundred bales of cotton and that the same be ordered to be delivered to it or be per-
72 mitted to be transported by a steamship of the said Compagnie Generale Transatlantique to Havre under and in accordance with the said bills of lading issued by said company. And, likewise, in the alternative, this defendant prays that if this Court rejects its claim to the ownership

or possession of said cotton then that the Court will recognize and enforce such special property or equitable lien or charge or other right in or to said cotton or its proceeds to which this defendant is entitled in the premises and which to the Court shall seem meet and just, and for such other and general relief as may be just and equitable.

(Signed) DENÉGRE & BLAIR,
Solicitors for Defendant, the Société Géneral.

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73 RULE TO RELEASE COTTON ON BOND, ETC.

Filed February 6, 1911.

United States District Court, Eastern District of Louisiana, New Orleans Division.

J. A. E. Pyle, Trustee,
vs. No. 14,243.
Texas Transport and Terminal Company, et als.

On motion of Denegre and Blair, solicitors for the Societe Generale, a defendant herein, still appearing as heretofore under protest and reserving the benefit of its demurrer to the jurisdiction of this Court, and, on suggesting to the Court that said defendant desires to release the cotton referred to in the complainant's bill from the operation of the injunctive orders herein rendered by substituting a bond therefor so that said cotton may be free from any claims of any of the parties to this cause and from any costs or charges growing out of this cause, it is ordered that the complainant and defendants, the Texas Transport and Terminal Company and the Compagnie Generale Transatlantique, show cause on Friday, February 10, 1911, at 11 A. M. why said cotton should not be released and delivered to said defendant or the Compagnie Generale Transatlantique for transportation to Havre and delivery to this defendant or the holder of the bills of lading of said Compagnie Generale Transatlantique issued therefor, free from all claims of the parties hereto whether for the cotton or for any costs, expenses or damages incurred or sustained in consequence of this litigation, on this defendant furnishing a bond in favor

of complainant, with surety approved by the Court, for the value of said cotton, conditioned upon this defendant producing the said cotton or so much thereof as this Court in this cause may decree the said trustee complainant to be entitled to or paying to said trustee complainant the value of said cotton or of the part thereof to which he may be decreed to be entitled by this Court in this cause, the value to be the value at the time of the release as shown by the amount of the bond; the bond to take the place of the cotton and the giving of the bond to be otherwise without prejudice to the status,
74 rights or obligations of any of the parties to this cause.

Feby. 6/1911.
Service accepted.
(Signed) W. C. DUFOUR.
(Signed) GEO. H. TERRIBERRY, Atty.

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75 ORDER CONTINUING MOTION TO SELL COTTON INDEFINITELY.

Extract From the Minutes, November Term, 1910.

New Orleans, Monday, February 6th, 1911.

Court met pursuant to adjournment.
Present: Hon. Rufus E. Foster, Judge.

J. A. E. Pyle, Trustee,
vs. No. 14,243.
Texas Transport & Terminal Company, et al.

The motion of complainant to sell the cotton enjoined herein, set for hearing this day, was called.

Present: Messrs. Dufour & Dufour, Solicitors for Complainant, Mover.
Present: George H. Terriberry, Esq., Solicitor for Texas Transport & Terminal Co., et als., Defendants.
Present: Messrs. Denegre & Blair, Solicitors for Societe Generale, Defendant.

Whereupon, after hearing the parties, it is ordered that the said motion be continued indefinitely.

76 ORDER FOR DELIVERY OF COTTON ON BOND.

Filed February 10, 1911.

United States District Court, Eastern District of Louisiana, New Orleans Division.

J. A. E. Pyle, Trustee,

vs. No. 14,243.

Texas Transport and Terminal Company, et als.

The rule taken by the Societe Generale, a defendant herein, for leave to release the cotton referred to in complainant's bill from the operation of the injunctive orders herein entered by substituting a bond therefor, came on this day to be heard and was argued by counsel, the plaintiff in rule, the Societe Generale, being represented by Denegre and Blair, its solicitors of record, the complainant, J. A. E. Pyle, trustee, by Dufour and Dufour, his solicitors of record, and defendants, the Texas Transport and Terminal Company and the Compagnie Generale Transatlantique, by George H. Terriberry, their solicitors of record; and the Court being fully advised in the premises, it is ordered that the four hundred bales of cotton referred to in the complaint herein and hereafter more particularly described shall be released from the operation of the injunction or restraining orders herein issued or heretofore issued by this Court on the said Societe Generale furnishing a bond in favor of the complainant trustee, with surety approved by the Court, for the value of said cotton conditioned upon the Societe Generale producing the said cotton or so much thereof as this Court in this cause may decree the said complainant trustee to be entitled to or paying to said complainant trustee the value of said cotton or the part thereof to which he may be decreed to be entitled by this Court in this cause, the value to be the value at the time of the release as shown by the amount of the bond, the cotton covered by this order being numbered and marked as follows:

R D F E	1/100	Q M T A	1/100
Q P L H	1/100	Q R T Y	1/100

77 It is further ordered that on said bond being furnished the cotton shall be released and discharged from all claims of any party to this cause and especially from

all claims for any costs, expenses or damages growing out of this litigation or any injunctive orders of this Court, the bond to take the place of the cotton and the giving of the bond to be otherwise without prejudice to the status, rights or obligations of any of the parties to this cause.

It is further ordered that the aggregate value of said four hundred bales of cotton is hereby fixed at twenty-nine thousand, six hundred and eighty-seven and 50/100 dollars ($29,-687.50) all parties consenting to said valuation, and the amount of the bond herein authorized is fixed at said sum of $29,-687.50. It is further ordered that when the bond herein provided for shall have been furnished, the cotton so released shall be free from all costs, charges and expenses, including expenses of insurance, drayage and storage, and said expense of insurance, drayage and storage if not previously paid by the trustee as herein provided, shall be taxed as costs in this suit and shall be recoverable under the bonds heretofore given by the trustee. It is further ordered that the trustee forthwith apply to the Honorable H. C. Niles, United States Judge for the Northern District of Mississippi, for authority to pay the Compagnie Generale Transatlantique the said storage charges and insurance premiums which the Compagnie Generale Transatlantique has either paid out or become liable for in preserving the said cotton, and when said trustee is so authorized he shall have the right to apply to the Court for a proportionate reduction of the several bonds heretofore furnished by him to the extent of said cash payment.

It is further ordered that on defendant, the Societe Generale, filing with the clerk of this Court a bond of the character and amount above provided for, and which has been approved by this Court or a Judge thereof, all injunctive orders of this Court in respect to said cotton shall be released and dissolved, and the clerk of this Court is directed then to so notify the defendants, the Compagnie Generale Transatlantique and the Texas Transport and Terminal Company.

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(Signed) RUFUS E. FOSTER, Judge.

O. K.
(Sgd.) J. P. B.
(Sgd.) G. H. T.
(Sgd.) W. C. D.
Feb. 10/11.

79 RELEASE BOND OF SOCIETE GENERALE.

Filed February 15th, 1911.

United States District Court, Eastern District of Louisiana.

J. A. E. Pyle, Trustee,
vs. No. 14,243.
Texas Transport & Terminal Company, et als.

Know all men by these presents, that we, the Societe Generale, as principal obligor, and the American Surety Company of New York, as surety, are held and firmly bound, jointly and severally, unto J. A. E. Pyle, trustee in bankruptcy for Steele, Miller & Company, Bankrupts, in the sum of twenty-nine thousand, six hundred and eighty-seven dollars and fifty cents ($29,687.50) for the payment whereof well and truly to be made we bind ourselves, our heirs, executors, administrators and successors, jointly and severally firmly by these presents.

Signed and sealed this 4th day of February, A. D. 1911.

The condition of this obligation is such that,

Whereas, in a certain cause now pending in the United States District Court for the Eastern District of Louisiana, New Orleans Division, No. 14243 of the docket of said Court and entitled, "J. A. E. Pyle, Trustee, vs. Texas Transport & Terminal Company, et als.," the said Pyle made claim to four hundred bales of cotton fully described in the pleadings in said cause, and obtained from said Court an order or injunction prohibiting the removal of said cotton from the jurisdiction of this Court, and

Whereas, on the tenth day of February, 1911, an order was rendered in said cause giving leave to the said Societe Generale to release the said cotton from the operation of said injunction by substituting a bond therefor:

Now, therefore, if said United States District
80 Court in said cause shall decree that the said obligee, the trustee in bankruptcy, is entitled to said cotton or any part of it, and if the said Societe Generale shall produce said cotton or the part thereof to which the obligee may be so decreed to be entitled, or pay to the obligee the value of said cotton, or of the part thereof to which the obligee may be

so decreed to be entitled, the value to be the value at the time of the release as shown by the amount of the bond, then this obligation shall be null and void; otherwise to be of full force and effect.

SOCIETE GENERALE,
(Signed) By J. P. BLAIR, Attorney in Fact.
AMERICAN SURETY COMPANY OF NEW YORK,
(Signed) By J. H. FULTON,
Resident Vice-President.

Attest.
(Signed) PETER F. PESCUD,
[Seal] Resident Assistant Secretary.

Approved.
(Signed) RUFUS E. FOSTER, Judge.

Approved.
(Signed) W. C. DUFOUR. 5035

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81 REPLICATION TO ANSWER OF SOCIETE GENERALE.

Filed March 6, 1911.

United States District Court, Eastern District of Louisiana.

J. A. E. Pyle, Trustee,
vs. No. 14,243.
Texas Transport & Terminal Company, et als.

The replication of J. A. E. Pyle, trustee, Steele, Miller & Company, to the answer of the Societe Generale:

This repliant, saving and reserving unto himself all and all manner of advantage of exception to the manifold insufficiencies of said answer, for replication thereunto saith:

That he will aver and prove his said bill to be true, certain and sufficient in the law to be answered unto, and that the said answer of the said defendant is uncertain, untrue and insufficient to be replied to by this repliant; without this, that

any other matter or thing whatsoever in the said answer contained, material or effectual to be replied unto, confessed and avoided, traversed or denied, is true; all which matters and things this repliant is and will be ready to aver and prove as this Honorable Court shall direct and humbly prays as in and by his said bill he hath already prayed.

(Signed) W. A. PERCY,
DUFOUR & DUFOUR, Solicitors.

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82 ANSWER OF TEXAS TRANSPORT & TERMINAL COMPANY AND COMPAGNIE GENERALE TRANSATLANTIQUE.

Filed June 15th, 1911.

United States District Court, Eastern District of Louisiana.

J. A. E. Pyle, Trustee,
vs. No. 13,243. In Equity.
Texas Transport & Terminal Company, et als.

The joint and several answers of Texas Transport and Terminal Company and of Compagnie Generale Transatlantique:

Now, come Texas Transport & Terminal Company and Compagnie Generale Transatlantique, made defendants herein, and these defendants now and at all times saving to themselves any and all manner of benefit or advantage of exception or otherwise than can or may be had or taken to the many errors, uncertainties and imperfections in the said bill contained, for answer thereto, or to so much thereof as these defendants are advised it is material or necessary for them to make answer to, answering, say:

1. They admit that the Compagnie Generale Transatlantique is a corporation created under the laws of the Republic of France, with its domicile in the City of Paris, France, and that Texas Transport & Terminal Company is a corporation organized under the laws of the State of New Jersey; that Compagnie Generale Transatlantique is a common carrier by

sea and operates a line of steamers between New Orleans, in Louisiana, and Bordeaux and Havre, in France.

2. They say that, for want of sufficient information, they can neither admit nor deny the allegations contained in the second, third, fourth, fifth and sixth paragraphs of the complaint, relative to the domicile, the business, and the various transactions of Steele, Miller & Company.

3. They say that they believe that the allegations of the seventh paragraph of the complaint are substantially true.

4. For want of sufficient information, they can neither deny nor admit the allegations in the eighth paragraph of the complaint relative to the relations and transactions between Steele, Miller & Company and Scheuch & Company or between Steele, Miller & Company and Societe Generale.

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5. Answering the ninth paragraph of the complaint, they say that it is true that on the 7th day of May, 1910, there was on board the steamship "Texas," which said steamer belongs to defendant, Compagnie Generale Transatlantique, 2494 bales of cotton shipped by Steele, Miller & Company to Havre, shipper's order, notify Scheuch & Company, Havre; that, in the case of J. A. E. Pyle, Receiver, vs. Philip Landgren, Master, steamship Texas, et als., No. 14,219 of the docket of the United States District Court for the Eastern District of Louisiana, these defendants were enjoined pendente lite from taking said cotton out of the jurisdiction of this Court. These defendants admit that they caused said cotton, at the expense of said Pyle, receiver, to be discharged from said steamer so that the steamer could proceed on her voyage as she was prepared, ready, and going to do when restrained on May 7, 1910, and enjoined on May 9, 1910; they admit that the [they] caused said cotton to be stored in the Kentucky Warehouse, at New Orleans, and they show that they caused the said cotton to be insured for the benefit of whom it might concern while the cotton was so stored.

6. They admit the truth of the allegations contained in the tenth paragraph of the complaint, relative to the refusal

of these defendants to deliver said cotton to any person other than the holder of the bills of lading covering same.

7. The defendant, the Compagnie Generale Transatlantique, is solely and only a common carrier by sea; it has no relation with said cotton except as a common carrier; that it has, as in duty bound and as by law required, obeyed all of the orders of this Honorable Court, in the various cases of Pyle, Receiver, vs. Philip Landgren, Master, Steamship Texas, et als., No. 14,219 of the docket of this Court, and in the cases of Pyle, Trustee, vs. Texas Transport & Terminal
84 Company, et als., numbered, respectively, 14,240, 14,241, 14,242, 14,243, and 14277 of the docket of this Court; defendants show that the said injunctions remained in force and were obeyed by these defendants until they were, on the 15th day of February, 1911, notified by Frank H. Mortimer, Clerk of Court, that all injunctive orders in respect of said cotton were released and dissolved; that thereupon, the Compagnie Generale Transatlantique carried said cotton forward by its first steamer, the Guatemala, and delivered the said cotton to the holders of its bills of lading in Havre, France, and took its said bills of lading on delivering said cotton, its bills of lading being thus accomplished and the responsibility and liability of the Compagnie Generale Transatlantique, and of its agent, The Texas Transport & Terminal Company, in respect of said cotton, being thereupon terminated.

Now, the defendant, the Compagnie Generale Transatlantique, shows that, in obeying the various orders of this Honorable Court, it sustained damages and incurred expenses, which in equity, law, and justice, the Court should require the complainant herein to pay to said defendant. That the damages so sustained by said Compagnie Generale Transatlantique, as a result of the aforesaid injunctive orders of this Court, are as follows:

(1) In dead freight on said 2494 bales of cotton, which cotton was delivered to, and placed on board of, the steamship Texas, and which said cotton was subsequently discharged, the said steamer proceeding on her voyage without said cargo and without any substitute therefore, the amount of said dead freight being $3310.53.

(2) In the cost of insurance of said 2494 bales of cotton, while in the Kentucky Warehouse from May 10, 1910, to March 9, 1911, paid out in cash by said Compagnie Generale Transatlantique, which amounted to the sum of $2621.54.

(3) In cost of drayage of said cotton from steamer Texas to Kentucky Warehouse, the storage in said warehouse from May 12, 1910, to March 9, 1911, the drayage to the steamer Guatemala, and re-marking the said cotton, for all of which the said Compagnie Generale Transatlantique owes the said Kentucky Press and is bound to pay, amounting to the sum of $2682.55.

85 (4) In the cost of detention of the steamer Texas at New Orleans for nine days while her cargo was being discharged and reloaded so as to comply with the injunction of May 9, 1910, the sum of $1667.20.

(5) The difference between the current rate of freight, that is, thirty-seven (37) cents per one hundred pounds, applying when said cotton was carried forward to destination by the steamship Guatemala, on March 16, 1911, and the bill of lading rate, that is, twenty-six (26) cents per hundred pounds, on 2094 bales weighing 1,055,761 pounds, and twenty-eight (28) cents per hundred pounds on 400 bales weiging 201,943 pounds, at which rate this defendant was, under its said contracts, obligated to carry said cotton, the said difference amounting in the aggregate on the 2494 bales, to the sum of $1343.08.

(6) The Compagnie Generale Transatlantique has had to employ an attorney-at-law for counsel throughout these matters, and, also, to recover the damages aforesaid, and it prays the Court to allow it a reasonable sum as counsel fees.

The defendant, the Compagnie Generale Transatlantique, shows that, in equity, justice, and law, it should have a decree in its favor and against the complainant in full of all of said damages, with legal interest from the time said damages were sustained until paid.

Wherefore, these defendants pray that the said bill of complaint be dismissed as against these defendants, and for costs; the defendant, the Compagnie Generale Transatlantique, prays

that there may be a decree in its favor and against the complainants for all the damages sustained, with legal interest thereon from the time said damages were sustained until paid, as fully set out in this answer; these defendants further pray for all such other and general relief as they may, in equity and law, be entitled to receive and the Court competent to grant.

(Signed) GEO. H. TERRIBERRY,
Solicitor for Defendants, Texas Transport & Terminal Company and Compagnie Generale Transatlantique.

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86 AMENDED ANSWER.

Filed August 29th, 1911.

In the District Court of the United States for the Eastern District of Louisiana.

J. A. E. Pyle, Trustee,
vs. No. 14,243. In Equity.
Texas Transport & Terminal Company, et al.

And now comes Texas Transport & Terminal Company and Compagnie Generale Transatlantique, the defendants in the above cause, and leave of Court being first had, file the following amendment to the answer filed in this cause on the 15th day of June, A. D. 1911, to-wit:

After the conclusion of the seventh article of the answer, add the following allegations:

"The defendant, the Compagnie Generale Transatlantique, further shows that, for the damages aforesaid, it has a lien and privilege on all of the 2494 bales of cotton which were on board its said steamer Texas, but that, as a bond was furnished by the defendant herein, Societe Generale, equal to the value of the cotton covered by bills of lading held by it, the said bond to stand in the place and stead of the said cotton, and, as it was ordered by the Court, at the suggestion of all parties hereto, that all claims against said cotton should be referred to said bond, the claim of said Compagnie Generale Transatlantique

against said cotton and the lien and privilege in its favor on said cotton now holds and applies as against said bond so filed by the defendant herein, Societe Generale, said bond standing in the place and stead of said cotton."

And amend the prayer of said answer so as to read as follows:

"Wherefore, these defendants pray that the said bill of complaint be dismissed as against them, and for costs; the defendant, the Compagnie Generale Transatlantique, prays that there may be a decree in its favor and against the complainant for all the damages sustained, with legal interest thereon from the time said damages were sustained
87 until paid, as fully set out in this answer; and, in the alternative, the defendant, the Compagnie Generale Transatlantique, prays that if this Court rejects its claim for damages, attorney's fees and interest against the complainant herein, then that the Court will grant and award such claim for all such damages, attorney's fees and interest against said cotton, or its proceeds, or the bond aforesaid standing in lieu thereof, with full recognition of its lien and privilege on said cotton or its proceeds or the bond which stands in lieu thereof, as this defendant may be entitled to have in the premises and which to the Court shall seem meet and just, and for such other and general relief as to the Court shall seem proper.

(Signed) GEO. H. TERRIBERRY,
Sol. for Texas Transport & Term. Co. and
Compagnie Gen. Transatlantique.

ORDER.

Let the foregoing amended answer be filed.

(Signed) RUFUS E. FOSTER,
United States Judge.

88 HEARING IN PART AND CONTINUANCE.

Extract From the Minutes, November Term, 1911.

New Orleans, Monday, November 20th, 1911.
Court met.
Present: Hon. Rufus E. Foster, Judge.

J. A. E. Pyle, Trustee,
vs. No. 14,243.
Texas Transport and Terminal Company, et als.

This cause came on to be heard this day upon the pleadings and proofs as specified in the notes of evidence offered in behalf of the respective parties:

Present: Messrs. Dufour & Dufour and W. A. Percy, Solicitors for Complainant.
Present: George H. Terriberry, Esq., Solicitor for Texas Transport & Terminal Co., and Compagnie Generale Transatlantique, Defendants.
Present: Messrs. Denegre & Blair, Solicitors for Societe Generale, Defendant.

and was heard in part, and continued until Tuesday, November 21st, 1911, at ten o'clock A. M., for further argument.

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89 NOTE OF EVIDENCE OF COMPLAINANT.

Filed November 20th, 1911.

United States District Court, Eastern District of Louisana.

J. A. Pyle, Trustee,
vs. No. 14,243.
Texas Transport & Terminal Company, et als.

Solicitors for complainant offer, produce, read and file in evidence in this case the following:

Stipulation of counsel as to the use in causes Nos. 14,240,

14,241, 14,242, 14,243 and 14,277 of the evidence taken and filed in any one of said causes.

Stipulation of counsel as to testimony of W. E. Kennedy.

The testimony of Edward S. Elliott.

The testimony of W. H. Hendren, together with the exhibits attached thereto, the first of said exhibits being attached to the record herein filed and marked "Complainant-26"; the second being Exhibit "No. 11," to-wit, cables offered in connection with the testimony of W. H. Hendren.

The testimony of Bernard Dessommes, together with exhibit, to-wit, copies of the Havre Bulletin of date April 27, 1910, and April 28, 1910, the said exhibit being attached to an affidavit of Wm. C. Dufour filed and used in connection with the proceedings for a preliminary injunction, and now made Exhibit "15."

The testimony of Henry E. Bory, together with the with the same exhibit offered in connection with the testimony of Bernard Dessommes.

The testimony of John H. Fulton, A. Breton, Jeff D. Hardin, Jr., together with the statement entitled "Loading Record," furnished by the said Jeff D. Hardin, Jr., which said exhibit is marked Exhibit "No. 10."

The testimony of C. H. G. Linde, together with Exhibit "1," being a letter from Scheuch & Company of date January 20, 1910; Exhibit "2," a letter from Scheuch & Company of date April 26, 1910; Exhibit "3," a letter from Scheuch
90 & Company of date March 22, 1910; Exhibit "4," a statemnt from Scheuch & Company of date April 2, 1910; Exhibit "5," a letter from Scheuch & Company of date April 1, 1910; Exhibit "6," cablegram to Scheuch & Company of date April 28, 1910; Exhibit "7," statement of drafts drawn by Steele, Miller & Company on Scheuch & Company and claimed by Linde to have been taken up April 29, 1910; Exhibit "8," a statement of Scheuch & Company of date April 29, 1910.

The testimony of Charles Janvier, Thomas Holford, together with extract from the Liverpool Daily Post & Mercury of April 22, 1910, attached to the affidavit of Wm. C. Dufour used in the proceedings on the application for a preliminary injunction, the said exhibit being marked "No. —."

The testimony of Edward S. Butler.

The testimony of Edward D. Nicholson.

All of said testimony being taken before Frank H. Mortimer, special examiner, at his office in the City of New Orleans, on the 7th, 9th, 15th, 16th and 22nd days of June, 1911.

A certified copy of the proceedings in the case of S. B. & E. Cohn, et al., vs. L. C. Steele, et al., No. 157 in Equity of the docket of the United States Circuit Court for the Eastern Division of the Northern District of Mississippi, being Exhibit "14."

Certified copy of the proceedings in the matter of Knoop, Fabarius, et al., vs. Steele, Miller & Company, No. 123 in Bankruptcy in the District Court of the United States for the Eastern Division of the Northern District of Mississippi, particularly the petition for adjudication in involuntary bankruptcy, the certificate of the clerk showing the date of the filing thereof and the orders of the Court in the premises. The appointment of J. A. E. Pyle as temporary receiver and the bond of J. A. E. Pyle as temporary receiver. The order of reference to John W. Davis, referee in bankruptcy. The adjudication in bankruptcy by the said John W. Davis. The certificate of the said John W. Davis, referee in bankruptcy,

91 showing the election of a trustee, the bond of said trustee, together with the certificate of the clerk of the District Court of the United States for the Northern District of Mississippi, showing that John W. Davis was at the time of the said proceedings the referee in bankruptcy of said Court and is now the referee of the said Court in bankruptcy; the same being Exhibit "No. 12" and Exhibit "13."

Exhibits 2 to 53, inclusive, attached to the deposition of Adolph Riss, the same being the drafts, through bills of lading, invoices, insurance certificates and custody bills of lading called for during the examination of Mr. Linde.

Exhibit 1 attached to the deposition of Franz Lysell, called for as above.

Exhibits 1 to 34, inclusive, attached to the deposition of Elisee Paul Dubois, called for as above.

Exhibits 9 to 13, inclusive, attached to the deposition of Emile Level, called for as above.

Exhibits 2 to 7, inclusive, attached to the deposition of Jules Castel, called for as above.

Admission concerning testimony of J. A. E. Pyle, trustee.

Stipulation of counsel entitled in all the above causes where-

by all exhibits annexed to the foregoing depositions except those included in the above offer have, by agreement, been withdrawn because in the opinion of counsel they were irrelevant, cumulative or duplicates.

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92 United States District Court, Eastern District of Louisiana, New Orleans Division.

J. A. E. Pyle, Trustee,
vs. No. 14,243.
Texas Transport & Terminal Company, et als.

Note: Evidence offered and filed on behalf of complainant, and referred to in his note of evidence, copied into the transcript of appeal in the case of J. A. E. Pyle, Trustee, vs. Texas Transport & Terminal Company, et als., No. 14,240 of the docket of the United States District Court, Eastern District of Louisiana, New Orleans Division, in accordance with the praecipe for the transcripts of appeal.

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93 NOTE OF EVIDENCE ON BEHALF OF THE SOCIETE GENERALE.

Filed November 20th, 1911.

United States District Court, Eastern District of Louisiana, New Orleans Division.

J. A. E. Pyle, Trustee,
vs. No. 14,243.
Texas Transport and Terminal Company, et als.

Note of Evidence on Behalf of the Societe Generale.

The undersigned solicitors for the above named defendant offer, produce, read and file in evidence in this cause the following depositions, exhibits and stipulations:

1. Stipulation of counsel as to the use in causes Nos. 14,240, 14,241, 14,242, 14,243, 14,277 of evidence taken and filed in any one of said causes.

2. The deposition of Ferdinand Scheuch, together with the following exhibits: Nos. 1, 2, 3, and 4, and 5, 12 and 13, as types of exhibits from 4 to 13. Nos. 14 and 18 as types of exhibits 14 to 18, and 18 bis. Exhibits 19 to 29 inclusive. Exhibits Nos. 30 and 46 as types of 30 to 46. Exhibits 47 and 90 as types of Exhibits 47 to 90. Exhibits 91 and 659 as types of exhibits from 91 to 659. Exhibits 660 to 671 inclusive.

3. Deposition of Albert Schilling.

4. Deposition of Adolph Riss, and the following exhibits annexed and referred to therein: Exhibits from 1 to 53 inclusive. Exhibits 59 and 60. Exhibits 122 to 125 inclusive.

5. The deposition of Franz Lysell, and the following exhibits annexed and referred to therein: Exhibits 1, 2, 3, 5, 6, 7, 13 and 14.

6. The deposition of Elisee Paul Dubois, and the following exhibits annexed and referred to therein: Exhibits 1 to 36 inclusive. Exhibits 58 to 62 inclusive.

7. The deposition of Emile Level and the following exhibits annexed and referred to therein: Exhibits
94 Nos. 3, 5, 6, and 9 to 13 inclusive.

8. The deposition of Jules Castel and the following exhibits annexed and referred to therein: Exhibits Nos. 2 to 7 inclusive. Exhibits Nos. 9 to 12 inclusive.

All of the above depositions having been taken under commission issued herein before John Preston Beecher, United States Consul at Havre.

9. Stipulation of counsel entitled in all the above causes whereby all the exhibits annexed to the foregoing depositions except those included in the above offer have, by agreement, been withdrawn because in the opinion of counsel they were irrelevant, cumulative or duplicates.

(Signed) DENEGRE & BLAIR,
Solicitors for Societe Generale.

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95 United States District Court, Eastern District of Louisiana, New Orleans Division.

J. A. E. Pyle, Trustee,
versus No. 14,243.
Texas Transport & Terminal Company, et als.

Note: Evidence offered and filed on behalf of the Societe Generale, and referred to in its note of evidence, copied into the transcript of appeal in the case of J. A. E. Pyle, Trustee, vs. Texas Transport & Terminal Company, et als., No. 14,240 of the docket of the United States District Court, Eastern District of Louisiana, in accordance with the praecipe for the transcripts of appeal.

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96 RESUMED HEARING AND SUBMISSION.

Extract From the Minutes, November Term, 1911.

New Orleans, Tuesday, November 21st, 1911.

Court met pursuant to adjournment.

Present: Hon. Rufus E. Foster, Judge.

J. A. E. Pyle, Trustee,
vs. No. 14,243.
Texas Transport and Terminal Company, et als.

This cause, as continued from Monday, November 20th, 1911, for further hearing, was this day resumed.

Present: The solicitors for the respective parties, and was argued and submitted, when the Court took time to consider.

97 DECREE.

Filed January 1st, 1912.

United States District Court, Eastern District of Louisiana.
In Equity.

J. A. E. Pyle
vs. No. 14,243.
Societe Generale, Compagnie Generale Transatlantique, Texas Transport and Terminal Company, and Scheuch and Company.

Decree.

This cause came on to be heard at this term and was argued by counsel and taken under advisement by the Court, and upon consideration thereof it is now ordered, adjudged and decreed as follows, viz.:

That complainant's bill be and it is hereby dismissed as to defendant Societe Generale at costs of complainant, to be taxed; that the injunction pendente lite heretofore issued in this cause be and the same is hereby dissolved, and that Societe Generale be and the same is hereby declared to be the owner of the cotton referred to in the bill of complaint and covered by the bond herein given; and that the demands of the complainant against the said Societe Generale be denied.

The Court expressly reserves for further consideration all matters not herein expressly provided for, including the rights and claims of the Compagnie Generale Transatlantique against complainant and the rights and claims of all parties defendant, under the injunction bonds herein given as well against the sureties on said bonds as against the complainant, and as to all such matters the bill is retained for further proceedings.

(Signed) RUFUS E. FOSTER, Judge.

January 1st, 1912.

98 PETITION AND ORDER FOR APPEAL.

Filed March 1st, 1912.

United States District Court, Eastern District of Louisiana.

J. A. E. Pyle, Trustee,
versus No. 14243.
Texas Transport & Terminal Company, et als.

The petition of J. A. E. Pyle, trustee, complainant in the above numbered and entitled cause, with respect represents:

That complainant considers himself aggrieved by the decree made and entered in this cause on the 1st day of January, 1912; and,

That he desires and hereby appeals from said decree to the United States Circuit Court of Appeals for the Fifth Circuit, and presents herewith, and makes part of this petition as Exhibit "A" hereto, assignments of error in said decree.

Wherefore, the premises considered, petitioner prays that his appeal may be allowed to operate as a supersedeas upon the giving of a bond with surety in an amount to be fixed by the Court and conditioned according to law, and that a transcript of the whole record, proceedings, testimony and papers upon which said decree was made, duly authenticated be sent to the United States Circuit Court of Appeals for the Fifth Circuit in the manner and form and at the time prescribed by law and by the practice of said Court; that citation issue to Societe Generale through its solicitors of record, Denegre and Blair; to Compagnie Generale Transatlantique through its agent, W. H. Hendren, to the Texas Transport & Terminal Company through its agent, W. H. Hendren, in the manner and form prescribed by law, for a correction of said errors a reverse of said decree and for such other and further relief as may be proper in the premises.

(Signed) W. A. PERCY,
DUFOUR & DUFOUR,
Solicitors.

Service of above petition accepted 3/1/12.
(Signed) DENEGRE & BLAIR, Solrs.
(Signed) GEO. H. TERRIBERRY,
Sol. for Compagnie Generale Transatlantique and
Texas Transport & Terminal Co.

99 ORDER.

Considering the foregoing petition, it is ordered that an appeal be allowed to the said complainant, returnable to the United States Circuit Court of Appeals for the Fifth Circuit, within thirty days from the date thereof, and that same operate as a supersedeas, upon the said complainant furnishing bond with a good and solvent surety, according to law, in the sum of two hundred dollars.

(Signed) RUFUS E. FOSTER, Judge.

Mar. 1/12.

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100 ASSIGNMENTS OF ERROR.

Filed March 1st, 1912.

United States District Court, Eastern District of Louisiana.

J. A. E. Pyle, Trustee,
versus No. 14243.
Texas Transport & Terminal Company, et als.

Assignments of Error.

Now comes J. A. E. Pyle, trustee in bankruptcy of Steele, Miller & Company, appellant, by his attorney and says that, in the record and proceedings aforesaid, of the United States District Court for the Eastern District of Louisiana, in the above entitled cause and in the decree therein rendered on the 1st day of January, 1912, manifest error hath intervened to the prejudice of said appellant, in this, to-wit:

(1) The Court erred in rendering and entering a decree dismissing the bill of complaint of J. A. E. Pyle, trustee in bankruptcy of Steele, Miller & Company.

(2) The Court erred in rendering and entering a decree in favor of the defendant.

(3) The Court erred in holding that the Bank of Mulhouse

was the owner of the cotton described in the bill of complaint and covered by the bond herein given.

(4) The Court erred in holding that, by delivering the actual cotton to the carriers, Steele, Miller & Company intended to appropriate, and did appropriate, said cotton to the fraudulent bills of lading theretofore acquired and held by the defendant, the Bank of Mulhouse.

(5) The Court erred in holding that the defendant bank was in fact a purchaser of actual cotton from Steele, Miller & Company.

(6) The Court erred in failing to find and hold that the defendant knew, or ought to have known, or had reasonable grounds to believe, that Steele, Miller & Company were insolvent at the time the defendant received the genu-
101 ine bills of lading representing cotton actually shipped, referred to in the bill of complaint.

(7) The Court erred in failing to find and to hold that Steele, Miller & Company, by delivering the genuine bills of lading to the defendant representing cotton actually shipped, thereby intended to prefer and did prefer said defendant to and over its other creditors and thereby intended to grant, and did grant, an illegal and unfair preference to the defendant, and that the defendant did receive a preference within the meaning and intendment of the bankrupt statute of the United States.

Wherefore, the said J. A. E. Pyle, trustee in bankruptcy of Steele, Miller & Company, appellant, prays that for the errors aforesaid and other errors appearing in the record in the above entitled cause to the prejudice of appellant, the said decree be reversed and annulled and that appellant be granted such relief as may be proper, and appellant shall ever so pray.

(Signed) W. A. PERCY,
DUFOUR & DUFOUR,
Solicitors.

102 BOND.

Filed March 1st, 1912.

United States District Court, Eastern District of Louisiana.

J. A. E. Pyle, Trustee,
versus No. 14243.
Texas Transport and Terminal Company, et als.

Know all men by these presents, that we, J. A. E. Pyle, trustee in bankruptcy of Steele, Miller & Company, as principal, and Southwestern Surety Insurance Company of Oklahoma, as sureties, are held and firmly bound unto Texas Transport & Terminal Company, Compagnie Generale Transatlantique, Societe Generale in the full and just sum of two hundred dollars to be paid to the said Texas Transport & Terminal Company, Compagnie Generale Transatlantique, Societe Generale, certain attorney, executors, administrators or assigns, to which payment, well and truly to be made, we bind ourselves, our heirs, executors and administrators, jointly and severally, by these presents. Sealed with our seals and dated this 1st day of March, in the year of our Lord one thousand nine hundred and twelve.

Whereas, lately at a session of the United States District Court, holding sessions in and for the Eastern District of Louisiana, in a suit depending in said Court between J. A. E. Pyle, Trustee, and the Texas Transport & Terminal Company, et als., number 14243 of the docket of said Court, a decree was rendered against the said J. A. E. Pyle, trustee, and the said J. A. E. Pyle, trustee, having obtained an appeal and filed a copy thereof in the clerk's office of the said Court to reverse the decree in the aforesaid suit, and a citation directed to the said Texas Transport & Terminal Company, Compagnie Generale Transatlantique, Societe Generale, citing and admonishing them to be and appear before the United States Circuit Court of Appeals for the Fifth Circuit, to be holden at New Orleans, Louisiana, within 30 days from the date thereof.

Now, the condition of the above obligation is such, that if the said J. A. E. Pyle, trustee, shall prosecute said appeal to

effect, and answer all damages and costs if he fail to
103 make his plea good, then the above obligation to be void; else to remain in full force and virtue.

(Signed) J. A. E. PYLE, Trustee,
By WM. C. DUFOUR,
[Seal] His Solicitor & Attorney.
(Signed) SOUTHWESTERN SURETY INS. CO. OF OKLA.,
By J. H. BODENHEIMER,
[Seal] Agent & Atty. in Fact.

Approved by—
(Signed) RUFUS E. FOSTER, Judge.

United States of America.

District Court of the United States, Eastern District of Louisiana.

Clerk's Office:

I, HENRY J. CARTER, Clerk of the District Court of the United States for the Eastern District of Louisiana, do hereby certify that the foregoing 103 pages contain and form a full, complete, true and perfect transcript of the record, assignment of errors, and proceedings in the case of J. A. E. Pyle, Trustee, vs. Texas Transport & Terminal Company, et als., No. 14,243 of the docket of the said Court (made in accordance with the praecipe for the transcript of appeal, copied at page 1333 of the transcript of appeal in the case entitled as above and numbered 14,240 of the docket of the said Court).

Witness my hand and the seal of said Court, at the City of New Orleans, Louisiana, this 10th day of July, A. D. 1912.

[Seal] H. J. CARTER, Clerk.

That thereafter, the following proceedings were had in said cause in the United States Circuit Court of Appeals for the Fifth Circuit, viz:

Argument and Submission.

Extract from the Minutes of March 20, 1913.

No. 2392.

J. A. E. PYLE, Trustee in Bankruptcy of Steele, Miller & Company,
versus
TEXAS TRANSPORT & TERMINAL COMPANY, COMPAGNIE GENERALE TRANSATLANTIQUE, and SOCIETE GENERALE.

On this day this cause was called, and, after argument by William C. Dufour, Esq., for Appellant, and J. P. Blair, Esq., for Appellees, was submitted to the Court.

Opinion of the Court.

Filed April 8th, 1913.

United States Circuit Court of Appeals, Fifth Circuit.

No. 2389.

J. A. E. PYLE, Trustee, etc.,
v.
TEXAS TRANSPORT & TERMINAL CO. et al. and BANK DE MULHOUSE.

No. 2390.

J. A. E. PYLE, Trustee, etc.,
v.
TEXAS TRANSPORT & TERMINAL CO. et al. and COMPTOIR D'ESCOMPTE DE MULHOUSE.

No. 2391.

J. A. E. PYLE, Trustee, etc.,
v.
TEXAS TRANSPORTATION & TERMINAL CO. et al. and PAUL CHARDIN.

No. 2392.

J. A. E. PYLE, Trustee, etc.,
v.
TEXAS TRANSPORT & TERMINAL CO. et al. and SOCIETÉ GENERALE.

No. 2393.

J. A. E. PYLE, Trustee, etc.,
v.
TEXAS TRANSPORT & TERMINAL CO. et al. and CREDIT HAVRAIS.

Appeals from the District Court of the United States, Eastern District of Louisiana.

Before Pardee and Shelby, Circuit Judges, and Sheppard, District Judge.

By the COURT:

The appeals in the above numbered and entitled cases are affirmed on the authority of Lovell v. Newman & Son, 192 F. 753, and Hentz & Co. v. Lovell, Id. 762.

Judgment.

Extract from the Minutes of April 8, 1913.

No. 2392.

J. A. E. PYLE, Trustee in Bankruptcy of Steele, Miller & Company,
versus
TEXAS TRANSPORT & TERMINAL COMPANY, COMPAGNIE GENERALE TRANSATLANTIQUE, and SOCIETE GENERALE.

This cause came on to be heard on the transcript of the record from the District Court of the United States for the Eastern District of Louisiana, and was argued by counsel.

On consideration whereof, It is now here ordered, adjudged and decreed by this Court, that the decree of the said District Court, in this cause, be, and the same is hereby affirmed;

It is further ordered, adjudged and decreed that the Appellant, J. A. E. Pyle, Trustee in Bankruptcy of Steele, Miller & Company, and the surety on the appeal bond herein, Southwestern Surety Insurance Company, of Oklahoma, be condemned, in solido, to pay the costs of this cause in this Court, for which execution may be issued out of said District Court.

Petition for Rehearing.

Filed May 5th, 1913.

United States Circuit Court of Appeals, Fifth Circuit.

No. 2392.

J. A. E. PYLE, Trustee,
versus
TEXAS TRANSPORT & TERMINAL Co. et als.

Application for Rehearing.

The petition of J. A. E. Pyle, trustee, appellant in the above entitled cause, represents:

That there is error to petitioner's prejudice in the decree rendered by this Honorable Court in this cause affirming the decree from which petitioner's appeal was prosecuted and for specification of error, petitioner says:

That the decree is based upon the authority of the cases of Lovell, Trustee, v. Isidore Newman, and Hentz v. Lovell, reported in 193 F., p. 753.

It is respectfully submitted that the issue involved in the present suit is separate and distinct from the issues involved and presented in the case under authority of which the Court has affirmed this decree, in that the cases cited invoked solely the issue of appropriation of property, while in the instant case, the Court had before it a direct charge of giving and receiving an unfair preference within the intendment of the Bankruptcy Statute, which issue was neither presented nor decided in the Lovell or Hentz cases; that, therefore, the authority cited cannot be held to control the present case.

Wherefore, petitioner prays that a rehearing may be granted in this cause, and that upon such hearing, the judgment appealed from be reversed and that judgment be rendered in favor of petitioner, granting the relief prayed for.

(Signed) WM. C. DUFOUR,
(Signed) H. GENERES DUFOUR,
Solicitors for Appellant.

The undersigned hereby certifies that he is one of the solicitors for J. A. E. Pyle, trustee, appellant in the above entitled and numbered cause, and that in his opinion the foregoing petition for rehearing is well founded in law.

(Signed) WM. C. DUFOUR.

Order Denying Rehearing.

Extract from the Minutes of June 2nd, 1913.

No. 2392.

J. A. E. PYLE, Trustee in Bankruptcy of Steele, Miller & Company,
versus
TEXAS TRANSPORT & TERMINAL COMPANY, COMPAGNIE GENERALE TRANSATLANTIQUE, and SOCIETE GENERALE.

Ordered that the petition for rehearing, filed in this cause, be, and the same is hereby denied.

Petition for Appeal, and Order.

Filed July 3d, 1913.

United States Circuit Court of Appeals, Fifth Circuit.

No. 2392.

J. A. E. PYLE, Trustee,
versus.
THE TEXAS TRANSPORT & TERMINAL COMPANY et als.

The petition of J. A. E. Pyle, Trustee of Steele, Miller & Company, Bankrupts, with respect shows:

That the above entitled cause is now pending in the United States Circuit Court of Appeals for the Fifth Circuit and that a decree has herein been rendered on the 8th day of April, 1913, affirming the judgment of the District Court of the United States for the eastern district of Louisiana; that the matter in controversy in said suit exceeds Three Thousand Dollars, ($3000), besides interest and costs, and that the jurisdiction of none of the said Courts is, or was invoked, nor is or was dependent upon the opposite parties to the suit or controversy being aliens or citizens of the United States or citizens of different states; and that this cause does not arise under the patent laws nor the copyright laws, nor the revenue laws, nor the criminal laws of the United States and that it is not an admiralty case and that it is a proper cause to be reviewed by the Supreme Court of the United States upon appeal.

Therefore, your petitioner respectfully prays that an appeal with supersedeas be allowed in the above cause, and that the Clerk of the United States Court of Appeals for the Fifth Circuit be directed to send the record and proceedings in said cause, with all things concerning same, to the Supreme Court of the United States in order that the errors complained of in the assignment of errors herein filed by said appellant may be reviewed and if error be found corrected according to the laws and customs of the United States.

(Signed) WM. C. DUFOUR,
(Signed) H. GENERES DUFOUR,
Solicitors.

Order.

The foregoing petition is granted and the appeal allowed as prayed for upon appellant giving bond according to law in the sum of $250.00.

July 2d, 1913.

(Signed) DON A. PARDEE, *Judge.*

Assignment of Errors.

Filed July 3d, 1913.

United States Circuit Court of Appeals, Fifth Circuit.

No. 2392.

J. A. E. PYLE, Trustee,
versus.
TEXAS TRANSPORT & TERMINAL COMPANY et als.

And now comes J. A. E. Pyle, Trustee in Bankruptcy of Steele, Miller & Company, Bankrupts, appellant, through William J. Lamb, William C. Dufour and H. Generes Dufour, his solicitors and says that in the record and proceedings aforesaid in the United States Circuit Court of Appeals for the Fifth Circuit in the above entitled

cause and in the rendition of the final decree therein manifest error has intervened to the prejudice of said appellant in this, to-wit:

(1) The United States Circuit Court of Appeals for the Fifth Circuit erred in affirming the decree of the United States District Court for the Eastern District of Louisiana.

(2) The said United States Circuit Court of Appeals for the Fifth Circuit erred in not reversing the said decree of the United States District Court for the eastern district of Louisiana.

(3) The said United States — Court of Appeals for the Fifth Circuit erred in failing to sustain appellant's Assignment of Error No. 4 upon the record of said case, as follows:

"That the Court erred in holding by delivering the actual cotton to the carriers, Steele, Miller & Company intended to appropriate and did appropriate said cotton to the fraudulent bills of lading acquired and held by defendant."

(4) The said United States Circuit Court of Appeals for the Fifth Circuit erred in failing to sustain appellant's Assignment of Error No. 5 upon the record of said case as follows:

"The Court erred in holding that the defendant bank was in fact a purchaser of actual cotton from Steele, Miller & Company."

(5) The said United States Circuit Court of Appeals for the Fifth Circuit erred in failing to sustain appellant's Assignment of Error No. 6 upon the record of said case, as follows:

"The Court erred in failing to find and hold that the defendant knew or ought to have known or had reasonable grounds to believe that Steele, Miller & Company were insolvent at the time the defendant received the genuine bills of lading representing cotton actually shipped referred to in the bill of complaint."

(6) The said United States Circuit Court of Appeals for the Fifth Circuit erred in failing to sustain appellant's Assignment of Error No. 7, upon the record of said case as follows:

"The Court erred in failing to find and to hold that Steele, Miller & Company, by delivering the genuine bills of lading to the defendant representing cotton actually shipped, thereby intended to prefer and did prefer said defendant to and over its other creditors, and thereby intended to grant and did grant an illegal and unfair preference within the meaning and intendment of the bankrupt statute of the United States."

Wherefore, said J. A. E. Pyle, Trustee, as aforesaid, prays that for the errors aforesaid and other errors appearing in the record of said United States Circuit Court of Appeals for the Fifth Circuit in the above entitled cause to the prejudice of the appellant, said decree of the United States Circuit Court of Appeals for the Fifth Circuit be reversed and annulled and that said cause be remanded to the United States District Court for the Eastern District of Louisiana, with instructions to set aside the decree heretofore rendered in the trial of this cause and commanding a new trial for same and such other proceedings in said cause as may be determined upon by this Honorable Court to the end that justice may be obtained in the premises.

(Signed) WM. C. DUFOUR,
(Signed) H. GENERES DUFOUR,
Solicitors.

Appeal Bond.

Filed July 7th, 1913.

J. A. E. PYLE, Trustee in Bankruptcy of Steele, Miller & Company,
vs.
THE TEXAS TRANSPORT AND TERMINAL COMPANY, COMPAGNIE GENERALE TRANSATLANTIQUE and SOCIETE GENERALE.

Know All Men by These Presents, that we, J. A. E. Pyle, Trustee in Bankruptcy of Steele, Miller & Company, as principal and Southwestern Surtey Insurance Company, as surety, are held and firmly bound unto the Texas Transport and Terminal Company, Compagnie Generale Transatlantique and Societe Generale in the sum of Two Hundred and Fifty Dollars ($250.00) to be paid to the said, the Texas Transport and Terminal Company, Compagnie General Transatlantique and Societe Generale; we bind ourselves and each of our heirs, executors and administrators, jointly and severally, firmly by these presents.

Sealed with our seals and dated the 3d day of July, A. D. 1913.

Whereas, the appellant in the above entitled suit has prosecuted an appeal to the Supreme Court of the United States to reverse the decree rendered and entered in said cause in the Circuit Court of Appeals for the Fifth Circuit on the 8th day of April, 1913.

Now, Therefore, the condition of this obligation is such that if the said appellant shall prosecute said appeal to effect and answer all damages and costs if he fails to make said appeal good, then this obligation shall be void; otherwise to remain in full force and virtue.

(Signed) J. A. E. PYLE, *Trustee.*
By WM. C. DUFOUR, *Solicitor.*
(Signed) SOUTHWESTERN SURETY INSURANCE CO. OF OKLAHOMA. [SEAL.]
By J. H. BODENHEIMER,
Agent & Attorney-in-Fact.

The foregoing bond is approved this 4th day of July, A. D. 1913.
(Signed) DON A. PARDEE,
United States Circuit Judge, Fifth District.

Clerk's Certificate.

UNITED STATES OF AMERICA:

United States Circuit Court of Appeals, Fifth Circuit.

I, Frank H. Mortimer, Clerk of the United States Circuit Court of Appeals for the Fifth Circuit, do hereby certify that the pages numbered from 81 to 97 next preceding this certificate contain full, true and complete copies of all the pleadings, record entries and proceed-

ings, including the opinion of the United States Circuit Court of Appeals for the Fifth Circuit, in a certain cause in said Court, numbered 2392, wherein J. A. E. Pyle, Trustee in Bankruptcy of Steele, Miller & Company, is Appellant, and The Texas Transport & Terminal Company, Compagnie General Transatlantique and Societé Generale are Appellees, as full, true and complete as the originals of the same now remain in my office.

I further certify that the pages of the printed record numbered from 1 to 80 are identical with the printed record upon which said cause was heard and decided in the said Circuit Court of Appeals

In testimony whereof I hereunto subscribe my name and affix the seal of the said Circuit Court of Appeals, at my office in the City of New Orleans, Louisiana, in the Fifth Circuit, this 10th day of July, A. D. 1913.

[Seal United States Circuit Court of Appeals, Fifth Circuit.]

FRANK H. MORTIMER,
Clerk of the United States
Circuit Court of Appeals.

THE UNITED STATES OF AMERICA:

The President of the United States to The Texas Transport and Terminal Company, Compagnie Transatlantique, and Societe Generale, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States at Washington, D. C., within thirty (30) days from the date hereof, pursuant to a petition and order of appeal sued out and filed in the Clerk's Office of the United States Circuit Court of Appeals for the Fifth Circuit, in the cause wherein J. A. E. Pyle, Trustee in Bankruptcy of Steele, Miller & Company is Appellant and The Texas Transport and Terminal Company, Compagnie Generale Transatlantique and Societe Generale are Appellees, to show cause, if any there be, why the decree rendered against the said J. A. E. Pyle, Trustee in Bankruptcy of Steele, Miller & Company, and in said petition and order of appeal mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness, the Honorable Edward Douglass White, Chief Justice of the United States, this 4th day of July in the year of our Lord one thousand nine hundred and thirteen.

July 9th, 1913, New Orleans, La.

DON A. PARDEE,
United States Circuit Judge.

Service accepted.

DENEGRE & BLAIR,
DUGAN & BLAIR,
Sol'rs for Societe Generale.
GEO. H. TERRIBERRY,
Solicitor for Tex. Tr. & Term. Co. &
Compagnie Generale Transatlantique.

[Endorsed:] No. 2392. United States Circuit Court of Appeals, Fifth Circuit. J. A. E. Pyle, Trustee in Bankruptcy of Steele, Miller & Co., Appellants, vs. Texas Transport & Terminal Company, Compagnie Generale Transatlantique, and Societe Generale, Appellees. Citation. U. S. Circuit Court of Appeals. Filed Jul- 10, 1913. Frank H. Mortimer, Clerk.

Endorsed on cover: File No. 23,810. U. S. Circuit Court Appeals, Fifth Circuit. Term No. 229. J. A. E. Pyle, Trustee in bankruptcy of Steele, Miller & Company, appellant, vs. The Texas Transport & Terminal Company, Compagnie Generale Transatlantique, and Societe Generale. Filed August 1st, 1913. File No. 23,810.

Office Supreme Court, U.
FILED
MAR 15 1915
JAMES D. MAHER
Clerk

SUPREME COURT OF THE UNITED STATES,

OCTOBER TERM, 1914.

No. 229.

J. A. E. PYLE, Trustee in Bankruptcy of STEELE, MILLER & COMPANY, Appellant,

vs.

THE TEXAS TRANSPORT & TERMINAL COMPANY, COMPAGNIE GENERALE TRANSATLANTIQUE, and SOCIETE GENERALE.

Memorandum Brief for Appellees.

The above-entitled appeal and appeals numbers 226, 227, 228 and 230 were tried, argued and decided together, both in the District Court and in the Court of Appeals. They present the same general questions of law and of fact. The evidence is the same in each case; that is to say, the evidence taken in one case was by stipulation deemed to be taken in all the other cases, and has been included in only one of the transcripts of record, that of Cause No. 226. The cases illustrate and explain each other, so that they may be more conveniently discussed and more readily understood when presented and considered together. We have, therefore, covered all the cases in one brief and argument, filed in No. 226. To that brief we now beg leave to refer the Court, and for the reasons therein stated, we ask that the judgment appealed from be affirmed.

Respectfully submitted,

GEORGE DENÈGRE,
JOSEPH PAXTON BLAIR,
VICTOR LEOVY,
Of Counsel for Appellees.

Office Supreme Court, U. S.
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APR 3 1915
JAMES D. MAHER
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Supreme Court of the United States

October Term, 1914.

No. 229.

J. A. E. PYLE, TRUSTEE IN BANKRUPTCY OF STEELE, MILLER & COMPANY, Appellant,

versus

THE TEXAS TRANSPORT & TERMINAL COMPANY, COMPAGNIE GENERALE TRANSATLANTIQUE AND SOCIETE GENERALE.

MEMORANDUM BRIEF FOR APPELLANTS.

As stated in the memorandum filed by the appellee, the above entitled appeal and appeals numbers 226, 227, 228 and 230 were tried, argued and decided together, both in the District Court and in the Circuit Court of Appeals. We also have covered all of the cases in one brief, filed in Number 226.

We ask for the same relief as has been asked for in that case and for the reasons stated in that brief.

Respectfully submitted,

W. J. LAMB,

WM. C. DUFOUR,

H. GENERES DUFOUR,

GEORGE JANVIER,

Of Counsel for Appellants.

(23,811)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1914.

No. 230.

J. A. E. PYLE, TRUSTEE IN BANKRUPTCY OF STEELE, MILLER & COMPANY, APPELLANT,

vs.

THE TEXAS TRANSPORT & TERMINAL COMPANY, COMPAGNIE GENERALE TRANSATLANTIQUE, AND CREDIT HAVRAIS.

APPEAL FROM THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIFTH CIRCUIT.

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UNITED STATES OF AMERICA:

United States Circuit Court of Appeals, Fifth Judicial Circuit.

Pleas and Proceedings Had and Done at a Regular Term of the United States Circuit Court of Appeals for the Fifth Circuit, Begun on Thursday, November 21st, A. D. 1912, at New Orleans, Louisiana, Before the Honorable Don A. Pardee and the Honorable David D. Shelby, Circuit Judges, and the Honorable William B. Sheppard, District Judge.

J. A. E. PYLE, Trustee in Bankruptcy of Steele, Miller & Company, Appellant,

versus

TEXAS TRANSPORT & TERMINAL COMPANY, COMPAGNIE GENERALE TRANSATLANTIQUE, and CREDIT HAVRAIS, Appellees.

Be it remembered, that heretofore, to-wit, on the 10th day of July, A. D. 1912, a transcript of the record of the above styled cause, pursuant to an appeal from the District Court of the United States for the Eastern District of Louisiana, was filed in the office of the Clerk of the said United States Circuit Court of Appeals for the Fifth Circuit, which said transcript was filed and docketed in said Circuit Court of Appeals as No. 2393, as follows:

UNITED STATES OF AMERICA.

UNITED STATES DISTRICT COURT, EASTERN DISTRICT OF LOUISIANA, NEW ORLEANS DIVISION.

J. A. E. PYLE, TRUSTEE,

Appellant,

versus No. 14,277

TEXAS TRANSPORT & TERMINAL COMPANY, ET ALS.,

Appellants.

Messrs. W. A. Percy, J. A. Lamb, and Dufour & Dufour, for J. A. E. Pyle, Trustee, Appellant.

Mr. George H. Terriberry, for the Texas Transport & Terminal Company, and Compagnie Generale Transatlantique, Appellees.

Messrs. Denegre & Blair, for Credit Havrais, Appellee.

Appeal from the United States District Court for the Eastern District of Louisiana, New Orleans Division, to the United States Circuit Court of Appeals for the Fifth Circuit, Returnable Within Thirty (30) Days From the First (1st) Day of March, A. D. 1912, at the City of New Orleans, State of Louisiana.

Extension of Thirty (30) Days' Time From the Return of the Appeal, To-wit, From March 31st, 1912, Granted by

the Honorable United States Circuit Court of Appeals for the Fifth Circuit.

Extension of Thirty (30) Days' Time From the Return of the Appeal, To-wit, From April 30th, 1912, Granted by the Honorable United States Circuit Court of Appeals for the Fifth Circuit.

Time for Filing the Transcript of Appeal in the Honorable United States Circuit Court of Appeals for the Fifth Circuit, Extended to the Tenth (10th) Day of July, A. D. 1912, as Per Agreements of Counsel, Copied at Pages 1332 and 1336, Respectively, of the Transcript of Appeal in the Case Bearing the Above Title, and Numbered 14,240 of the Docket of the Said United States District Court.

TRANSCRIPT OF APPEAL.

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1 BILL OF COMPLAINT.

Filed January 23rd, 1911.

United States District Court, Eastern District of Louisiana, New Orleans Division.

J. A. E. PYLE, TRUSTEE,

versus No. 14,277

TEXAS TRANSPORT & TERMINAL COMPANY, ET ALS.

To the Honorable the Judge of the United States District Court, Eastern District of Louisiana.

J. A. E. Pyle, a citizen of the State of Mississippi, suing herein as trustee in bankruptcy of Steele, Miller & Company, brings this his bill of complaint against the Compagnie Generale Transatlantique, a corporation created under the laws

of the Republic of France, with its domicile in the City of Paris, France, the Texas Transport & Terminal Company, a corporation created under the laws of the State of New Jersey, but doing business in the City of New Orleans through W. H. Hendren, agent, F. Scheuch & Company, a commercial firm composed of Ferd Scheuch and Albert Schilling, of Havre, France, and Credit Havrais, a corporation which your orator is advised is organized under the laws of France, with its domicile at Havre, France, and other persons against whom process is herein prayed; and thereupon your orator complains and says:

First. That Steele, Miller & Company, a partnership composed of L. C. Steele, J. H. Miller and C. H. G. Linde, was lately doing business in and had its principal place of business at Corinth, in the State of Mississippi, and within the Northern District of Mississippi; that the business of said firm of Steele, Miller & Company consisted of the purchasing and selling of cotton.

Second. That on May 4, 1910, in the suit No. 123, entitled "Knoop, Fabarius & Company, et al., vs. Steele, Miller & Company," in the United States District Court for the Northern District of Mississippi, application was made for an adjudication in involuntary bankruptcy against said firm and for the appointment of a temporary receiver, to take charge of the assets of said firm pending the action of the Court and pending the election of a trustee; that your orator, J. A. E. Pyle, was appointed by the Honorable Judge of the
2 United States District Court for the Northern District of Mississippi, as temporary receiver, in accordance with the prayer of said petition, and that your orator duly qualified as such, all of which will appear more fully from the petition and order filed in said cause and the oath and bond filed by your orator as temporary receiver, in the said numbered and entitled cause, all of which are made part hereof as though fully and at length set forth herein, and will be produced at the trial of this cause.

Third. That on the 31st day of May, 1910, in the trial of said cause held in the manner and form prescribed by law, the said firm of Steele, Miller & Company was adjudicated a bank-

rupt, and on the 11th day of July, 1910, at the meeting of the creditors held pursuant to law, your orator was elected trustee of the said firm of Steele, Miller & Company, all of which will appear more fully from the decree of adjudication in bankruptcy of the United States District Court for the Northern District of Mississippi, rendered on the 31st day of May, 1910, in said cause entitled "Knoop, Fabarius & Company, et al., vs. Steele, Miller & Company," No. 123 of the docket of the United States District Court for the Northern District of Mississippi, in bankruptcy, and by reference to the proceedings before the referee in bankruptcy and the order approving the bond of your orator as trustee, which said proceedings are also made part hereof as though fully and at length set forth herein and which will be produced at the trial of the cause.

Fourth. Your orator shows that on or prior to the 23rd day of April, 1910, Steele, Miller & Company were indebted to the Credit Havrais in the sum of 38,828.20 francs, which amounts to $7,452.62 at the current rate of exchange, and that said indebtedness arose out of the following
3 transactions:

That said Steele, Miller & Company at a date to your orator unknown had adopted a fraudulent scheme of obtaining money, and in furtherance of which the said bankrupt firm did draw drafts for large sums of money and did attach to such drafts what purported to be through bills of lading of carriers for lots of cotton specifically described in such bills of lading, and thereupon the said Steele, Miller & Company received the money called for by such drafts either by their sale or their acceptance and payment by the drawees; that the said bills of lading resembled in form and appearance the bills of lading issued by carriers at places from which Steele, Miller & Company, from time to time, shipped cotton over the lines of such carriers, but the bills of lading attached to such drafts did not represent cotton actually received and shipped by the carriers, who, it was purported, issued them, but were spurious and forged bills of lading and in no sense represented cotton then in the possession of Steele, Miller & Company, or delivered to the carriers for transportation. Your orator further avers that the sale, negotiation and acceptance of drafts with actual bills of lading for the cotton

thereto attached, under the custom which involves the delivery of such bills of lading upon the payment of drafts, was and is the usual and customary method by which sales of cotton were and are accomplished by persons engaged in such trade, and the purchases of cotton were and are accomplished by the purchase or acceptance and payment of such drafts with bills of lading thereto attached; that, under the custom and practice of the cotton trade, such drafts were and are purchased or paid wholly on tle security of the bills of lading thereto attached and for the purpose of obtaining the cotton therein mentioned, and the purchase or acceptance and payment of the said drafts with the said bills of lading
4 attached constituted the entire transaction between the parties, the bills of lading supposedly representing cotton which has passed into the carriers for delivery, subject to the presentation of the bill of lading, and the payment and acceptance of the draft and the acquisition of the said bill of lading passing the muniment of title to the party who had paid or accepted the said draft.

Fifth. Your orator avers that on or about the following date, to-wit, February 14, 1910, and within 90 days thereafter, the Credit Havrais had become the acceptor of a draft drawn by Steele, Miller & Company in the sum of 38,828.20 francs, which said draft, at the rate of exchange then current, amounted to $7,452.62, to which said draft was attached papers purporting to be a bill of lading of a carrier for 100 bales of cotton, and your orator annexes hereto as Exhibit "A," a statement showing the date of said draft, the name of the drawee, viz., the Credit Havrais, the time when the draft was payable, the marks of the cotton and the number of bales thereof, for which papers purporting to be bills of lading were attached to such draft, and the amount of such draft in francs, in which form of currency the draft was drawn, and your orator now avers as a matter of fact that the papers attached to the said draft were not bills of lading for which any cotton had been received or shipped by the carrier which it was purported had issued such bills of lading, as recited therein, and such papers purporting to be the bills of lading were therefore wholly spurious and of no force and effect as representing the cotton called for by them. The draft aforesaid, and appearing in the said Exhibit "A," at-

tached hereto, were accepted and paid for by or for the Credit Havrais for the purpose of obtaining and thus buying the bills of lading thereto attached, and the cotton called for by such ladings, and by such acceptance and payment your orator is advised and charges that the Credit Havrais became and was a creditor of said Steele, Miller & Company in the sum of money hereinbefore stated.

Sixth. Your orator avers that the firm of Scheuch & Company, herein made a defendant, was at the time of the transactions herein recited, a commercial firm engaged in buying and selling cotton in Havre, France; that the said firm would and did purchase from Steele, Miller & Company certain cotton, and in accordance with the customs of the trade, did open banker's credit against which Steele, Miller & Company would draw its drafts to which were attached the bills of lading, presumably bearing the marks of the cotton shipped and to which were further attached what is known in the trade as "all necessary documents;" that in the transactions herein complained of, the cotton referred to in the bills of lading and in the drafts hereinbefore described was sold to Scheuch & Company, drafts to be made upon the Credit Havrais, papers attached to said draft to the order of Steele, Miller & Company notify Scheuch & Company.

Your orator further avers that for a long time previous to the first day of April, 1910, and at all times since that date, Steele, Miller & Company were wholly insolvent; that they had issued and negotiated drafts with spurious bills of lading attached in the manner hereinabove described, which had been purchased and paid for by persons in various parts of the world in an amount of money approximating three million dollars ($3,000,000) or more.

Seventh. Your orator shows that on or about the 6th day of April, 1910, the said Steele, Miller & Company had in its possession or under its control at Macon, Mississippi, 100 bales of cotton marked as follows:

S R U I

that said cotton on or about said date was shipped by said Steele, Miller & Company to the City of New Orleans, way-

bills or bills of lading being issued in favor of J. D. Hardin & Company, of this city, and your orator annexes hereto as Exhibit "B" a statement showing the marks of said cotton, the number of bales of each mark, the date of delivery and issuance of the bills of lading of way-bills by the carrier, and the destination of said cotton. Your orator avers that the said cotton reached the City of New Orleans on or about the 23rd day of April, 1910, and that thereupon the said cotton was claimed by J. D. Hardin, or J. D. Hardin & Company, acting as agents of Steele, Miller & Company, and said cotton was delivered to the Compagnie Generale Transatlantique, through its agent, the Texas Transport & Terminal Company, and port bills of lading issued therefor, which said bills of lading were returned by the said Hardin to Steele, Miller & Company, at Corinth, Mississippi, or delivered in person to a member of said firm or an agent of said firm. Your orator annexes hereto as Exhibit "C" a statement showing the date that said cotton was delivered to the Texas Transport & Terminal Company as agents of the Compagnie Generale Transatlantique, the number and date of the bill of lading, the marks and number of bales of each mark of the said cotton so delivered.

Eighth. Your orator avers that on or about the 14th day of February, 1910, and continuously thereafter, the said Credit Havrais and Scheuch & Company, or both of them, were ordinary unsecured creditors in the sum of 38,828.20 francs, or $7,452.62, represented by the drafts herein described and to which was attached the spurious and forged bills of lading: that on or about said date the said Steele, Miller & Company, being then insolvent, with intent to prefer said Credit Havrais or Scheuch & Company, or both
7 of them, over their other creditors, did deposit in the United States mail the said port bills of lading, the said bills of lading being addressed to Scheuch & Company, and the same having been indorsed by Steele, Miller & Company, the object and purpose of forwarding said port bills of lading being to substitute the same for the forged and worthless bill or bills of lading attached to the draft held by the said Credit Havrais or Scheuch & Company, or both of them, and the said port bills of lading in due course were received by Scheuch & Company and delivered to the Credit

Havrais, but your orator now charges that the said bills were received by Scheuch & Company and delivered to the Credit Havrais, at a time subsequent to the adjudication in bankruptcy, and at a time when it was publicly known that Steele, Miller & Company were insolvent; and your orator is advised that the Credit Havrais thereupon surrendered its spurious and forged bills of lading to Scheuch & Company, who is now holding them, or by arrangement between said Scheuch & Company and the said Credit Havrais, said spurious bills of lading are being held by the said Credit Havrais for account of said parties. Your orator avers that the transmission of said port bills of lading to be substituted for the said fraudulent bills of lading was done with the intent to prefer the said Credit Havrais, and that when the said bills of lading were mailed to the said Scheuch & Company for delivery to the Credit Havrais, and were received by the said Scheuch & Company and delivered to the said Credit Havrais, in accepting the said bills of lading and permitting the substitution of the said valid and port or custody bills of lading for the worthless bills of lading then held, knew or should have known and had reasonable cause to believe that a preference was thereby given and intended and knew, or should
8 have known, that Steele, Miller & Company was at said time insolvent, and that the effect of the mailing, the receipt and acceptance and substitution of said bills of lading was to enable the said Scheuch & Company or said Credit Havrais to obtain payment of its said draft, and that said act of Steele, Miller & Company, in forwarding the said bills of lading to their said agents, Scheuch & Company, for delivery to the said Credit Havrais, was intended and was in fact a preference, and the acceptance of said bills of lading by the said Credit Havrais at a time when the said Credit Havrais knew, or should have known, that Steele, Miller & Company were insolvent, and when the Credit Havrais knew or should have known that gross frauds had been perpetrated by Steele, Miller & Company through forged bills of lading, and that the bills of lading held by them and attached to the draft hereinabove referred to were forgeries, was a preference within the meaning and intendment of the Bankrupt Statute. And your orator now charges that the effect of the act hereinabove described, if maintained and permitted by this Honorable Court, will be to enable the said Credit Havrais or

Scheuch & Company, or both of them, to obtain a greater per cent of their said debt than any other creditor of said bankrupt, and that such acts should be set aside.

Your orator charges that the acts hereinabove complained of were performed within four months prior to the filing of the petition of involuntary bankruptcy herein, and your orator is advised that the act or acts complained of are voidable at his election, and he does now elect to avoid the same and files this his bill to avoid said transfer.

Your orator avers that at the time of the institution of the proceedings in bankruptcy, and for a year previous to the time the said firm of Steele, Miller & Company and the individual members of said firm were insolvent within the
9 meaning and intent of the Bankrupt Laws of the United States, and that said Steele, Miller & Company, and the individual members of said firm, are so insolvent, and that they have not surrendered assets of sufficient value to pay the creditors of said estate, and that the amount surrendered by said bankrupts, including any amount that might be recovered by litigation, and the estates of the individual members, when added to the firm assets, will not be sufficient to discharge the debts and obligations of said Steele, Miller & Company, but will only pay a small proportion of said obligations.

Ninth. Your orator avers that, at the time of the filing of the petition in involuntary bankruptcy herein referred to, 2194 bales of said cotton were about to be shipped on the steamship "Texas" to Havre, France, and that the said 2494 bales of cotton were actually loaded upon the said steamship; that 500 bales of said cotton were in the custody of the New Orleans Terminal Company at Port Chalmette; that, to-wit, on the 7th day of May, 1910, your orator, as receiver in bankruptcy of said estate, filed his petition for injunction against the removal of said cotton in the United States District Court for the Eastern District of Louisiana, and thereupon the Honorable District Court granted a restraining order, and subsequently on the 9th day of May, 1910, said Court issued an injunction pendente lite, enjoining, restraining and prohibiting the master, owner and agent of the steamship "Texas" from removing from the jurisdiction of this Court the cotton referred to in said proceedings, and on the 31st day of May,

1910, issued its injunction against the New Orleans Terminal Company to the same effect, all of which will appear more fully by the record of said proceedings entitled "J. A. E. Pyle, Receiver, vs. Philip Landgren, Master SS. "Texas," et al., No. 14,219 of the docket of the United States
10 District Court for the Eastern District of Louisiana, which said record is made part hereof as though fully and at length set forth herein.

Your orator avers that upon the issuance of said injunction the Texas Transport & Terminal Company, the agent of the Compagnie Generale Transatlantique, the owners of said SS. "Texas," acting by and with the consent of the master and owner of said vessel, caused the cotton, the removal of which had been enjoined, to be discharged from said ship and stored in the Kentucky Press in this city, to remain there until the further orders of said Court, all in accordance with the decree rendered in the above numbered and entitled cause; and your orator avers that the said cotton is now in the said Kentucky Press awaiting the determination of this suit.

Your orator avers that the cotton hereinabove described was and is part of and included in the cotton in the custody of the Texas Transport & Terminal Company, agent of the Compagnie Generale Transatlantique, owner of the SS. "Texas," and now stored in the Kentucky Press, awaiting the determination of this suit.

Tenth. Your orator further avers that the Texas Transport & Terminal Company, W. H. Hendren, its agent, and the Compagnie Generale Transatlantique, decline to deliver said cotton, or any part thereof, to complainant, or to any part thereof, to complainant or to any other person until it has been adjudged who is the owner of this cotton and to whom the possession thereof should be delivered by it.

Eleventh. Your orator avers that, although the Texas Transport & Terminal Company holds itself out as the duly accredited agent of the Compagnie Generale Transatlantique and does and performs acts for and in behalf of said Compagnie Generale Transatlantique, your orator is informed that said Compagnie Generale Transatlantique has
11 never designated the said Texas Transport & Terminal Company as its agent for the service of pro-

cess in this State, as required by the laws of this State, and that process should issue herein against the said Compagnie Generale Transatlantique, through John T. Michel, Secretary of State of the State of Louisiana, in accordance with the laws of Louisiana upon the subject-matter.

Twelfth. Your orator further shows that the said Scheuch & Company and the individual members of said firm and the Credit Havrais are not residents of the Eastern District of Louisiana, but are aliens. That neither said Scheuch & Company nor the individual members of said firm, nor the Credit Havrais, or any of its agents or officers, are at present within the Eastern District of Louisiana, or in the United States, and neither the said Scheuch & Company nor the individual members of said firm, nor the Credit Havrais, are represented by anyone authorized to accept or receive service of process, and that service by publication in the manner and form provided in such cases is necessary in the premises.

Thirteenth. Your orator submits himself to the jurisdiction of this Court, and offers to do equity, and to perform, such terms and conditions as may be imposed by the Court upon granting of the relief hereinafter prayed for.

The premises considered, your orator prays that this Court will take jurisdiction of this his bill; that the Compagnie Generale Transatlantique and the Texas Transport & Terminal Company be made parties respondent hereto, and that by appropriate process and orders they be severally required to answer this bill, but not under oath, answer under oath being hereby expressly waived; that this Court's writ of subpoena issue to the said Compagnie General Transatlantique and the Texas Transport & Terminal Company, commanding
12 them to answer this bill according to the rule of this Court, but not under oath (answer under oath being hereby expressly waived); that service upon the Compagnie Generale Transatlantique be made upon John T. Michel, Secretary of State of the State of Louisiana, at Baton Rouge, Louisiana; that by appropriate orders and process Scheuch & Company and the Credit Havrais be required to appear in this cause and plead or demur to and answer this bill, but not under oath (answer under oath being expressly waived); that

pending the final hearing of this bill, said Compagnie Generale Transatlantique, the Texas Transport & Terminal Company, and W. H. Hendren, agent, their officers and employees, be enjoined and restrained from removing or disposing of said 100 bales of cotton; that upon the final hearing of this bill this Court will set aside the transfer of the said 100 bales of cotton by the said bankrupt to the said Credit Havrais or Scheuch & Company, or both of them, and hold the same void and of no effect; that the title to the said cotton and the right of possession thereof is in your orator and will permit your orator to take possession of said cotton and administer the same, or the proceeds thereof, for the benefit of the creditors in bankruptcy of Steele, Miller & Company in said bankruptcy proceedings in which said estate is being administered in the United States District Court for the Northern District of Mississippi, and in the ancillary proceedings in the United States District Court for the Eastern District of Louisiana.

And if your orator is mistaken in the relief prayed for, then he prays for such other, further and general relief as in equity and good conscience he may be entitled to.

(Signed) DUFOUR & DUFOUR,
(Signed) W. A. PERCY,
Solicitors.

13 State of Louisiana,
Parish of Orleans,
City of New Orleans.

William C. Dufour, being duly sworn, deposes and says:

That he is a member of the firm of Dufour & Dufour, attorneys at law in the City of New Orleans; that he is one of the attorneys for J. A. E. Pyle, trustee; the said J. A. E. Pyle, trustee, is a resident of the State of Mississippi, and is not now in the State of Louisiana, and is not otherwise represented, and that the allegations contained in the foregoing petitions are true and correct to the best of his knowledge and belief, so help him God.

(Signed) WM. C. DUFOUR.

Sworn to and subscribed before me this 23 day of January, 1911.

[Seal] (Signed) FRANK H. MORTIMER,
U. S. Commr.

14 EXHIBIT "A."

Statement of Credit Havrais, Havre, France.

Date, 2/14/10; draft No., 2214; marks, S. R. U. I.; No. bales, 100; amount, 38,828.20; pretended origin of shipment, Columbus, Miss. Which amount, at 5.21, amounts to $7,452.62.

15 EXHIBIT "B."

Statement of Cotton Shipped by Steele, Miller & Company to J. D. Hardin, Jr. & Co., of New Orleans, Showing the Origin and Marks of Cotton as Follows:

Date, 4/6/10; way bill, Macon; railroad, M. & O.; shipped to order, S/O—N. O.; marks, S. R. U. I.; No bales, 100.

16 EXHIBIT "C."

Shipment of Cotton Delivered by J. D. Hardin, Jr., & Company to Texas Transport & Terminal Company, Agents for the Str. Texas, Showing Marks and Date of Custody B/L.

Date of delivery, 4/23/10; custody; marks, S. R. U. I.; No. of bales, 100.

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17 United States District Court, Eastern District of Louisiana.

J. A. E. Pyle, Trustee,
vs. No. 14,277
Texas Transport & Terminal Company, et als.

Considering the allegations of this bill and the allegations in support thereof,

It is now ordered, That this bill be filed and process issued as prayed for.

It appearing to the Court that there is danger of irreparable injury to complainant, unless the acts sought to be enjoined herein are restrained until the hearing of a motion for injunction in this case, it is ordered:

(1) That the defendants, the Texas Transport & Terminal Company and the Compagnie Generale Transatlantique, and each of them, and the individual members thereof, and each of their servants, agents and employees, be and they are hereby restrained and enjoined until the further order of the Court herein from removing from the jurisdiction of this Court the 100 bales of cotton described in the bill filed in this cause, leave being given to the said Texas Transport & Terminal Company and the Compagnie General Transatlantique, or any other party in interest, to apply, after five days notice, to complainant's counsel for permission to bond said cotton.

(2) That the defendants, the Texas Transport & Terminal Company and Compagnie Generale Transatlantique, and each of them, show cause before this Court in the United States courtroom at the City of New Orleans, at eleven o'clock a. m., on the second Monday in March, to-wit, Monday, the thirteenth day of March, 1911, why an injunction pendente lite as prayed for in the said bill should not be issued.

18 3. That this restraining order shall be in force and effect from the date hereof until the hearing of complainant's motion for an interlocutory injunction herein, provided that complainant furnish bond within ten days from the date of this order in the sum of $500.00 payable to defendant with surety approved by the Clerk of this Court and conditioned substantially as hereinafter mentioned. The condition of said bond shall be substantially as follows:

Whereas, a restraining order has been made in the above numbered and entitled cause by the terms of which the defendants, and each of them, and each of their agents and employees, are restrained until an application for an interlocutory injunction herein is determined from doing or causing to be done certain acts.

Now, therefore, if the above mentioned J. A. E. Pyle, trus-

tee, shall pay or cause to be paid all damages caused by the issuance of said restraining order, and the costs of this cause in connection therewith in the event that said restraining order is dissolved or vacated as having been wrongfully issued, or because the said acts are improperly restrained, then this bond to be void, otherwise to remain in full force and effect.

It further appearing to the Court that said defendants Scheuch & Company and Fred Scheuch and Albert Schilling, the individual members of said firm, and the Credit Havrais, are not inhabitants of the Eastern District of Louisiana, upon whom service of process can be made,

It is ordered, That the defendants, Scheuch & Company and Fred Scheuch and Albert Schilling, individual members of said firm, and Credit Havrais, shall appear, plead, answer or demur by the second Monday in March, to-wit, Monday, the thirteenth day of March, 1911; that a copy of this
19 order be served upon said defendants wherever found, and if such personal service is not practicable, that said defendants be notified of this order so directing them to appear, plead, answer or demur by the second Monday of March, to-wit, Monday, March 13th, 1911, by publication thereof in a daily newspaper in the City of New Orleans, Louisiana, not less than once a week for six consecutive weeks.

(Signed) RUFUS E. FOSTER, Judge.

January 23, 1911.

20 MARSHAL'S RETURN ON COPY OF ORDER ON BILL OF COMPLAINT.

Filed January 30th, 1911.

United States District Court, Eastern District of Louisiana.

J. A. E. Pyle, Trustee,

vs. No. 14,277

Texas Transport & Terminal Company, et als.

Received by U. S. Marshal, New Orleans, La., Jan. 24/11. And on Jan. 26/11, I served copy hereof on the Texas

Transport and Terminal Co., et al., by handing same to W. H. Hendren, local manager, in person in New Orleans, La.

VICTOR LOISEL,
U. S. Marshal.

(Signed) By B. F. QUEEN, Dy.

And on Jan. 27/11 I served copy hereof on the Compagnie Generale Transatlantique by handing the same to Eugene McGivney, Ass't Sec. of State, in Baton Rouge, La.

VICTOR LOISEL,
U. S. Marshal.

(Signed) By B. F. QUEEN, Dy.

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21 SUBPOENA IN CHANCERY.

Issued Jan. 23rd, 1911.

United States of America.

The President of the United States,

To the Marshal of the Eastern District of Louisiana—Greeting:

You are hereby commanded to summon the Texas Transport & Terminal Company to appear before a District Court of the United States of America, to be holden at the City of New Orleans, Louisiana, on the first Monday of March, 1911, then and there to answer a bill in chancery filed against it and others, wherein J. A. E. Pyle, trustee in bankruptcy of Steele, Miller & Company, is complainant, and said the Compagnie General Transatlantique, Texas Transport & Terminal Company, F. Scheuch & Company, and Credit Havrais are defendants.

Herein fail not, and have you then and there this writ, with your indorsement thereon, how you have executed the same.

Witness, the Honorable Rufus E. Foster, Judge of the District Court of the United States, at New Orleans, La., this 23rd day of January, in the year of our Lord one thousand nine hundred and eleven, and 135th year of American independence.

[Seal of Court]

(Signed) FRANK H. MORTIMER, Clerk.

The defendant is hereby notified that it is required to enter its appearance in the Clerk's Office of the United States District Court on or before the first Monday of March, 1911, otherwise the bill may be taken pro confesso.

(Signed) FRANK H. MORTIMER, Clerk.

Clerk's Office:

A true copy.

[Seal] (Signed) FRANK H. MORTIMER, Clerk.

22 [Indorsed on back:] No. 14277. United States District Court, Eastern District of Louisiana, New Orleans Division. J. A. E. Pyle, Trustee, vs. Texas Transport and Terminal Co., et als. Subpoena in Chancery. Marshal's Return.

MARSHAL'S RETURN ON SUBPOENA IN CHANCERY.

Filed January 26th, 1911.

Received by U. S. Marshal, New Orleans, La., Jan. 24/11. And on Jan. 26/11, I served the original writ of which this is a true copy on the Texas Transport and Terminal Co. et als. by handing the same to W. H. Hendren, local manager in New Orleans, La.

(Signed) VICTOR LOISEL,
(Signed) By B. F. QUEEN, Dy.

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23 SUBPOENA IN CHANCERY.

Issued January 23rd, 1911.

United States of America.

The President of the United States,

To the Marshal of the Eastern District of Louisiana—Greeting:

You are hereby commanded to summon the Compagnie Generale Transatlantique, through John T. Michel, Secretary of State of the State of Louisiana, at Baton Rouge, Louisiana,

to appear before a District Court of the United States of America, to be holden at the City of New Orleans, Louisiana, on the first Monday of March, 1911, then and there to answer a bill in chancery filed against it and others, wherein J. A. E. Pyle, trustee in bankruptcy of Steele, Miller & Company, is complainant and said the Compagnie Generale Transatlantique, Texas Transport & Terminal Company, F. Scheuch, and Credit Havrais are defendants.

Herein fail not, and have you then and there this writ, with your indorsement thereon, how you have executed the same.

Witness, the Honorable Rufus E. Foster, Judge of the District Court of the United States, at New Orleans, La., this 23rd day of January, in the year of our Lord one thousand nine hundred and eleven, and 135th year of American independence.

(Signed) FRANK H. MORTIMER, Clerk.

[Seal of Court.]

The defendant is hereby notified that it is required to enter its appearance in the Clerk's Office of the United States District Court on or before the first Monday of March, 1911, otherwise the bill may be taken pro confesso.

(Signed) FRANK H. MORTIMER, Clerk.

Clerk's Office:

A true copy.

[Seal] (Signed) FRANK H. MORTIMER, Clerk.

24 [Indorsed on back:] No. 14277. United States District Court, Eastern District of Louisiana, New Orleans Division. J. A. E. Pyle, Trustee, vs. Texas Transport and Terminal Company et als. Subpoena in Chancery. Marshal's Return.

MARSHAL'S RETURN ON SUBPOENA IN CHANCERY.

Filed January 30th, 1911.

Received by U. S. Marshal, New Orleans, La., Jan. 24/11. And on Jan. 27/11 I served the original of which this is

a certified copy on the Compagnie Generale Transatlantique, by handing the same to Eugene McGivney, Ass't Sec. of State, in Baton Rouge, La.

VICTOR LOISEL,
U. S. Marshal.
By B. F. QUEEN, Dy.

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25 BOND FOR INJUNCTION PENDENTE LITE.

Filed Feb. 2, 1911.

United States District Court, Eastern District of Louisiana, New Orleans Division.

J. A. E. Pyle, Trustee,
vs. No. 14,277
Texas Transport & Terminal Company et al.

Know All Men By These Presents: That we, J. A. E. Pyle, trustee of Steele, Miller & Company, bankrupt, appointed by and acting under authority of the District Court of the United States for the Northern District of Mississippi, as principal, and Southwestern Surety Insurance Company of Oklahoma, as surety, are held and firmly bound unto the Compagnie Generale Transatlantique, the Texas Transport & Terminal Company, F. Scheuch & Company and Credit Havrais, defendant herein, for the use and benefits of defendant in the below mentioned suit, in the full and true sum of five hundred dollars ($500.00), lawful money of the United States of America, for the payment whereof we bind ourselves our heirs, executors, successors and assigns firmly by these presents.

Thus done and signed in the City of New Orleans, State of Louisiana, this 1st day of February, A. D. 1911.

Now, therefore, the condition of the above obligation is such that,

Whereas, the said J. A. E. Pyle, trustee in bankruptcy of Steele, Miller & Company, did, in the proceeding No. 14277, of the docket of the United States District Court, Eastern

District of Louisiana, in equity, entitled "J. A. E. Pyle, trustee, vs. Compagnie Generale Transatlantique, et als.," obtain a restraining order, restraining and enjoining the Texas Transport & Terminal Company and the Compagnie Generale Transatlantique, and each of them, and each of their servants, agents and employees, until the further orders of the Court from removing from the jurisdiction of the Court the 100 bales of cotton described in the pleadings filed in this cause upon condition that the said trustee shall furnish bond.

Now, therefore, if the above mentioned J. A. E. Pyle, trustee, shall pay, or cause to be paid, all damages caused
26 by the issuance of said restraining order, and the costs of this cause in connection therewith in the event that said restraining order is dissolved or vacated as having been wrongfully issued, or because the said acts are improperly enjoined, then this bond to be void, otherwise to remain in full force and effect.

(Sig) J. A. E. PYLE, Trustee.
By WM. C. DUFOUR,
Solicitor of Record.

(Sig) SOUTHWESTERN SURETY INSURANCE CO.
By JOS. BOYLE, [Seal]
Atty. in Fact.

Approved.

(Sig) RUFUS E. FOSTER, Judge.

27 RESTRAINING ORDER.

Issued February 2nd, 1911.

United States of America.

District Court of the United States, Eastern District of Louisiana, New Orleans Division.

J. A. E. Pyle, Trustee,
vs. No. 14,277
Texas Transport & Terminal Company et als.

The President of the United States,

To the Texas Transport & Terminal Company, and the Compagnie Generale Transatlantique—Greeting:

Whereas, it has been represented unto us in our said District Court on the part of J. A. E. Pyle, trustee in bankruptcy of Steele, Miller & Company, in a bill in equity lately exhibited against you, and each of you, touching certain matters and things therein set forth; and, whereas, the Honorable Rufus E. Foster, the Judge of our said Court, upon due consideration thereof, has made and allowed an order in said cause, whereby you, and each of you, are required to show cause on the 13th day of March, 1911, at 11 A. M., why an injunction should not issue as prayed for in said bill of complaint. And, whereas, the said Judge has granted and allowed an order restraining you, and each of you, immediately and forthwith and during the pendency of said motion for an injunction to the full extent and effect as prayed for in said bill of complaint.

Now, therefore, in consideration of the premises and of the allegations in said bill of complaint contained, you, the said Texas Transport & Terminal Company and the said Compagnie Generale Transatlantique, your agents, attorneys and servants, and each of you, are hereby commanded and strictly enjoined under the penalty of the law, that you and each of you absolutely refrain and desist from removing from the jurisdiction of this Court the 100 bales of cotton described in the bill filed in this cause.

And that you the said Texas Transport & Terminal Com-

pany and the said Compagnie General Transatlantique, your agents, attorneys and servants and each of you remain so inhibited and restrained until the further order of our said Court in the premises.

Witness, the Honorable Rufus E. Foster, Judge of said Court, at the City of New Orleans, La., this 2nd day of February, in the year of our Lord 1911.

(Signed) FRANK H. MORTIMER, Clerk.

A true copy.

(Signed) FRANK H. MORTIMER, Clerk.

New Orleans, La., February 2nd, 1911.

[Seal]

28 [Indorsed on back:] No. 14277. U. S. District Court, Eastern District of Louisiana, New Orleans Division. J. A. E. Pyle, Trustee, vs. Texas Transport & Terminal Company et als. Restraining Order.

MARSHAL'S RETURNS ON RESTRAINING ORDERS.

Filed February 8th, 1911.

Received by U. S. Marshal, New Orleans, La., Feb. 2/11.

And on Feb. 3/1911, I served the original writ of which this is a certified copy on the Texas Transport and Terminal Co. by handing the same to W. H. Hendren, local manager, in person in New Orleans, La.

VICTOR LOISEL,
U. S. Marshal.

(Signed) By B. F. QUEEN, Dy.

And on Feb. 3/1911 I served the original writ of which this is a certified copy on the Compagnie Generale Transatlantique by handing the same to E. J. O'Brien, Jr., Chief Clerk, in person in Baton Rouge, La.

VICTOR LOISEL,
U. S. Marshal.

(Signed) By E. M. KINLER, Dy.

29 SPECIAL APPEARANCE OF THE CREDIT HAVRAIS, A DEFENDANT.

Filed February 6th, 1911.

United States District Court, Eastern District of Louisiana.

J. A. E. Pyle, Trustee,
vs. No. ——
Texas Transport and Terminal Company, et als.

Special and Qualified Appearance of the Credit Havrais.

The Credit Havrais, made one of the defendants herein, now, through its undersigned solicitors, files this special appearance herein, reserving the right to object to the jurisdiction of this Court to grant the relief herein sought by complainant, and appearing under protest specially and solely for said purpose.

(Signed) DENEGRE & BLAIR,
Solicitors for Credit Havrais.

To the Clerk of the Said Court:

Please enter the special and qualified appearance of the Credit Havrais.

New Orleans, La., Feby. 6, 1911.

(Signed) DENEGRE & BLAIR,
Solicitors.

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30 DEMURRER OF CREDIT HAVRAIS.

Filed February 7th, 1911.

United States District Court, Eastern District of Louisiana.

J. A. E. Pyle, Trustee,
vs. No. 14,277
Texas Transport and Terminal Company, et als.

Now comes the Credit Havrais, made a defendant herein, and, appearing specially under protest for the purpose of

demurring to the jurisdiction of this Court, and for no other purpose, says that the Court is without jurisdiction in this cause for the following reasons:

That it appears from the bill of complaint that this is a suit brought under Section 60, Subdivisions a and b of the Bankruptcy Act of the United States, being the Act of Congress adopted July 1, 1898, and its amendments, to set aside the alleged voidable transfer to this defendant of the certain cotton described in the bill of complaint; that it further appears from said bill that this defendant, the transferee, is not a citizen or inhabitant or resident of this State or of the United States, but is a citizen, inhabitant and resident of the Republic of France, and that it has not been personally cited or served with any process of Court in this cause; that it is not shown by the said bill that any of its co-defendants has any authority to stand in judgment for this defendant; that the bill fails to state a case within the jurisdiction of this Court to give the relief, either interlocutory or final, prayed for by complainant.

Wherefore, defendant prays that its demurrer be sustained and this cause dismissed for want of jurisdiction, with reservation of this defendant's right to recover its costs
31 and all damages sustained from the injunctive orders heretofore rendered in this cause.

(Signed) DENEGRE & BLAIR,
Solicitors for above named defendant, the Credit Havrais.

J. P. Blair, being duly sworn, deposes and says that he is of counsel for the said Credit Havrais, which is absent from the State and unrepresented save by its said counsel and solicitors of record; that the foregoing demurrer was not filed for purposes of delay; and affiant further states and certifies that in his opinion said demurrer is good in point of law.

(Signed) J. P. BLAIR.

Sworn to and subscribed before me this 7th day of February, 1911.

[Seal] (Signed) HENRY H. CHAFFE,
Notary Public.

32 HEARING AND ORDER—DEMURRER OF CREDIT HAVRAIS OVERRULED.

Extract From the Minutes.

November Term, 1910.

New Orleans, Friday, February 10th, 1911.

Court met pursuant to adjournment.

Present: Hon. Rufus E. Foster, Judge.

J. A. E. Pyle, Trustee,

vs. No. 14,277

Texas Transport and Terminal Company, et als.

The demurrer filed by the Credit Havrais, made one of the defendants herein, was called:

Present: Messrs. Dufour & Dufour, Solicitors for Complainant.

Present: Messrs. Denegre & Blair, Solicitors for Credit Havrais, Exceptor.

Present: George H. Terriberry, Esq., Solicitor for Texas Transport & Terminal Co., et als, Defendants.

Whereupon, after hearing the solicitors for the respective parties, it is ordered that the said demurrer be, and it is hereby overruled.

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33 ANSWER OF CREDIT HAVRAIS.

Filed February 10, 1911.

United States District Court, Eastern District of Louisiana.

J. A. E. Pyle, Trustee,

vs. No. 14277

Texas Transport and Terminal Company et als.

Answer of the Credit Havrais.

Now comes the Credit Havrais, made one of the defendants herein, and, not waiving but reserving the benefit of its de-

murrer heretofore filed to the jurisdiction of this Court and overruled, and not consenting to but protesting against the exercise of jurisdiction in this cause, this defendant, now and at all times saving to itself any and all manner of benefit or advantage of exception or otherwise that can or may be had or taken to the many errors, uncertainties and imperfections in the said bill contained, for answer thereto, or to so much thereof as this defendant is advised it is material or necessary for it to make answer to, answering, says:

1. It admits and avers that this defendant is and was at all times hereinafter set forth, and for some time prior thereto, a banking institution duly incorporated and existing under the laws of the Republic of France, domiciled and engaged in the banking business in the City of Havre, France, including the purchase of cotton, as well as the furnishing and advancing of funds for the purchase thereof, and taking and holding title thereto.

It says that for want of sufficient information it can neither admit nor deny the allegations contained in paragraphs "Second" and "Third" of the complaint in respect to the domicile, membership and business of the firm of Steele, Miller and Company, the institution of proceedings of involuntary bankruptcy against said firm, the adjudication of bankruptcy, the appointment of complainant as receiver
34 and his subsequent election as trustee in bankruptcy, and it leaves complainant to his proof thereof.

3. It denies the statement contained in paragraph "Fourth" of the complaint that on or prior to April 15, 1910, the relations between Steele, Miller and Company and this defendant were those of debtor and creditor, Steele, Miller and Company being indebted to it in the sum of 38,828.20 francs or $7,452.62 in United States currency; it avers that it extended no credit and made no loan of money to Steele, Miller and Company, and that the obligation of Steele, Miller and Company on the date above named was not to pay this defendant a sum of money but to deliver or cause to be delivered to it one hundred bales of cotton which this defendant had already paid for as will hereafter be more fully set forth.

It avers that it is not familiar with the fraudulent practices of Steele, Miller and Company and is unable to affirm or deny

the correctness of the statements in respect thereto found in paragraph "Fourth" of the complaint and leaves complainant to his proof thereof.

It admits and avers that sales and purchases of cotton are usually made and effected by the drawing and acceptance of drafts with bills of lading covering the cotton attached thereto; it avers that such drafts are accepted and paid under the belief that the title to and possession of the cotton so sold and purchased are vested in the acceptor by such acceptance and the delivery of the bill of lading.

4. It admits that the statements contained in paragraph "Fifth" of the complaint and Exhibit A thereof are substantially correct. It avers that said draft represented the purchase price of a lot of one hundred bales of cotton and an identifying description of said cotton by lot numbers and marks was set forth on the face of the draft, the same corresponding with the description in the bill of lading attached thereto. It denies that said draft was accepted and paid by it for the purpose of "buying the bill of lading thereto attached," as charged in said paragraph "Fifth," and avers that the same was accepted and paid for the purpose of buying the cotton described in the draft as well as in the bill of lading and for the purpose of obtaining the bill of lading which it believed represented the cotton and the possession of which it believed gave it the title to and full dominion over the cotton; that it believed at the time that the bill of lading was genuine and that the cotton described therein and in the draft had been actually shipped at or about the date of said draft, but that, from the information received subsequent to May 7, 1910, and chiefly as a result of the investigations made in said bankruptcy proceedings, it now believes that said bill of lading was a forgery and that Steele, Miller and Company thus fraudulently deceived this defendant into believeing that at the same time that it paid for the cotton by acceptance of the draft, it was receiving symbolically title to and possession of the cotton. It denies that it thus became a creditor of Steele, Miller and Company in a sum representing the amount of said draft; it avers, on the contrary, it became entitled to demand and receive from Steele, Miller and Company, the one hundred bales of cotton which had been paid for by said draft, and Steele, Miller and

Company were legally bound to make good their default by securing, marking, forwarding and delivering to this defendant the cotton covered by said draft and purporting to be covered by said spurious bill of lading.

5. It admits that the statements contained in paragraph "Sixth" of the complaint in respect to the business of Scheuch and Company are substantially correct, except the
36 statement that the one hundred bales of cotton referred to in the complaint were sold to Scheuch and Company. It believes, and so avers, that the legal and intended effect of the transaction in respect to said cotton was a transfer of the title and of full dominion over the same to this defendant who was the party that paid the seller the purchase price; that it is not material for the purpose of this suit whether the ultimate purchaser was this defendant or Scheuch and Company, since, in any event, Steele, Miller and Company agreed and bound itself to sell and deliver the said cotton, received the price thereof, and, by subsequently shipping the cotton in question, simply carried out its aforesaid original obligations, and completely divested itself of the ownership and possession of said property.

For want of sufficient information it neither admits nor denies the statements in said paragraph "Sixth" in respect to the insolvency of Steele, Miller and Company prior to April 1st, 1910, and the issuance and negotiation by it of drafts with spurious bills of lading attached thereto to other persons in various parts of the world in an amount approximating 3,000,000 of dollars, and leaves complainant to his proof thereof. It especially denies that it knew of, or had any reasonable ground for suspecting, said insolvency or said fraudulent practices.

6. It admits that it is substantially correct, as stated in paragraph "Seventh" of the complaint, that on or prior to April 6, 1910, Steele, Miller and Company had collected or had in its possession 100 bales of cotton marked as stated in the complaint, which marks correspond with the marks of the cotton on the said draft and the bill of lading attached thereto, and the said cotton was then shipped by Steele, Miller and Company under an inland bill of lading to the order of Steele, Miller and Company, and that, when said cotton reached New

Orleans, the said bill of lading was exchanged for an ocean bill of lading dated April 23, 1910, which two bills of lading in respect to the marks of the cotton covered thereby,
37 the dates, etc., are described with substantial correctness in Exhibits B and C of the complaint; but this defendant asks leave to refer for greater certainty to said bills of lading or proven copies thereof which may be produced on the trial. It does not know, and has no means of knowing, how long prior to April 6, 1910, Steele, Miller and Company had acquired, assembled and marked said cotton.

It avers that the acquiring, assembling and marking of said cotton as aforesaid had for its intended and legal effect to appropriate said cotton to the obligations of Steele, Miller and Company under the said original transaction with this defendant, whereby it paid for said cotton and became entitled thereto; that the further legal and intended effect of said acts of Steele, Miller and Company was to give to this defendant the same right, title and interest in and to said cotton as it would have had if said cotton had been originally shipped under the original bills of lading attached to the draft as aforesaid.

It avers that it did not know and had no reason to believe or suspect, until the fraudulent practices of Steele, Miller and Company were disclosed to it through said bankruptcy proceedings some time subsequent to May 7th, 1910, that said cotton had not been shipped contemporaneously with the drawing of said draft; and, accordingly, it avers that the subsequent acts of Steele, Miller and Company to make good its default, perform its obligations and deliver to this defendant the cotton it had paid for and was entitled to receive, were done and accomplished without its procurance or knowledge.

7. It again denies that on or about February 14, 1910, or thereafter, this defendant and Scheuch and Company or either of them, were ordinary unsecured creditors of Steele, Miller and Company in the sum of 38,828.20 francs or $7,452.62 represented by the said draft with the forged bill of lading attached, and again avers that the obligation of Steele, Miller and Company was to deliver 100 bales of cotton, not to pay a certain sum of money. It admits and avers that on or about the date of its issuance Steele, Miller and
38 Company deposited in the United States Mail said

ocean or port bill of lading, representing said 100 bales of cotton, addressed to Scheuch and Company. It avers that said bill of lading was negotiable in form, to the order of Steele, Miller and Company and by it indorsed in blank, and represented said cotton; that said bill of lading was mailed to Scheuch and Company for this defendant, and that the deposit of said bill of lading in the mail operated at once a transfer of the title to and possession of said cotton to this defendant; that the acts of Steele, Miller and Company in obtaining and forwarding said port bill of lading was in furtherance of said acts of appropriation and a performance and consummation of their original obligations in the premises. It avers that said port bill of lading was delivered into its physical possession by Scheuch and Company on May 7, 1910, and it has ever since had possession thereof as well as of the bill of lading attached to said draft.

It denies that the forwarding to it by Steele, Miller and Company of said port bill of lading was done with the intent to prefer it or Scheuch and Company or either of them, over the other creditors of Steele, Miller and Company. It denies that when said bill of lading was mailed to Scheuch and company for this defendant or when the same was received and delivered to this defendant, it knew or ought to have known or had reasonable cause to believe that a preference was thereby given and intended; or knew or had reasonable cause to believe that Steele, Miller and Company was insolvent. It denies that the performance by Steele, Miller and Company, as aforesaid, of its obligation to deliver the cotton which it had agreed to deliver and which it had been paid for constituted any preference within the meaning of the Bankruptcy Act. It denies that it constituted any voidable preference in favor of this defendant for the additional reason that it was unaware at the time of the acts of Steele, Miller and Company, now charged, to constitute a preferential transfer, and because it believed and had reasonable cause to be-

39 lieve at the time that the cotton, the transfer of which to it is now sought to be avoided, was cotton shipped at the time of the drawing of said draft, had been fully paid for by it, belonged to it, and that it was justly and exclusively entitled thereto.

For want of sufficient information it neither affirms nor denies the statements contained in said paragraph "Eighth"

in respect to the insolvency of Steele, Miller and Company, and leaves complainant to his proof thereof. It denies that it knew or should have known at the time of the transfer to it of said cotton that Steele, Miller and Company was insolvent. It avers that even knowledge of such insolvency would not have given it reasonable cause to believe that it was being given a preference because, as it again states, it was unaware of the original default and subsequent acts done to make good the default, and because, had it known thereof, it would still reasonably have believed that it was justly entitled to the cotton it had paid for, whether Steele, Miller and Company was insolvent or not at the time of the shipment thereof.

8. It admits that the statements contained in paragraph "Ninth" of the complaint are substantially correct, but it asks leave to refer to the proceedings in said Cause No. 14,219, of Pyle vs. Philip Landgren for greater certainty as to the location of the cotton at the date of the institution of said cause and as to its subsequent disposition.

9. Further answering, this defendant says that for more than three years past Steele, Miller and Company has been engaged in the business, among other things, of selling cotton to or through Scheuch and Company, a commercial firm, which is now and was at all times hereafter set forth and for some time prior thereto, domiciled and engaged at Havre, France, in the business of buying, selling and importing cotton, that, according to the regular course of business, cotton the sale of which had been negotiated, would be shipped by Steele, Miller and Company under through bills of lading to shippers' order notify Scheuch and Company, each of which bills of lading being for one hundred bales, indorsed in blank by shippers, would be forwarded to Havre attached to a draft for the full price of the cotton covered thereby (less freight, insurance and six per cent. loss in weight) drawn by Steele, Miller and Company on some bank in Havre which had agreed to take and pay for the said cotton, the cotton being described in the draft, as well as in the bill of lading, by numbers of bales and marks, which is the customary method of describing and identifying lots of cotton intended to be sold; that said documents would be pre-

sented to the drawee bank in France by some third person for Steele, Miller and Company, and it was the intended and legal effect of the acts and doings of the parties in the premises that, on the acceptance of any such drafts (the same being sixty or ninety days drafts) title to the cotton, described as aforesaid in the drafts and in the bill of lading, should thereupon become vested in the person obligating himself by such acceptance to pay the price thereof, and the indorsed bill of lading was surrendered at the time to the acceptor of the draft as one of the means of transferring title and possession and as evidence thereof and to enable the holder to obtain possession of the cotton from the carrier on arrival at Havre. That during the period aforesaid of upwards of three years many thousands of bales of cotton were so shipped and disposed of by Steele, Miller and Company, and paid for and possession thereof secured through bills of lading and drafts as aforesaid, there being always attached to the bill of lading a certificate of insurance and an invoice showing correspondence of the amount of the draft with the price of the cotton, and in many of said transactions this defendant, the Credit Havrais, was the drawee of the draft and accepted and paid the same, and received the cotton in due course from the ocean
41 carrier on surrender of the bill of lading.

That in the regular course of business which had been going on as aforesaid for a number of years, Steele, Miller and Company on February 15, 1910, drew on this defendant a certain draft dated at Corinth, Mississippi, to drawers' order and by them indorsed in blank, payable ninety days after sight, numbered 2214 for 38,828.20 francs and reciting that it was drawn against 100 bales of cotton marked S R U I 1/100.

That the above described draft was presented to this defendant at Havre for acceptance and was by it accepted on February 28, 1910, and afterwards when it became due was paid in full by this defendant; that to said draft there was attached what purported to be a through bill of lading covering the same cotton described in the draft and an invoice showing correspondence between the amount of said draft and the price to be paid for the cotton, together with an insurance certificate in the usual form, all of which documents were surrendered to this defendant on the acceptance of the draft.

That, believing and relying upon the representations con-

veyed and the obligations imposed by the drawing and forwarding of said draft, with the documents attached, and believing that said cotton had actually been shipped and that acceptance of said draft, as well as the possession and ownership of the bill of lading (obtained through such acceptance) would transfer to it the title to said cotton and the right to receive the same on its arrival, this defendant accepted said draft (which it subsequently paid) and accepted the transfer and delivery of the bill of lading, with the attached certificate of insurance and invoice, which documents are still in its possession.

That no part of said cotton has ever come into the hands of this defendant except through the constructive de-
42 livery and possession effected by its holding and ownership of the bill of lading representing the same as herein set forth; that while it was awaiting the arrival of said cotton it received by mail from Steele, Miller and Company, through Scheuch and Company, on May seventh, 1910, the bill of lading issued as aforesaid by the Compagnie Generale Transatlantique acknowledging the receipt from Steele, Miller and Company of the said lot of one hundred bales with the said identifying marks, for shipment to Havre and delivery there to shippers' order, notifying Scheuch and Company, which bill of lading was indorsed in blank by Steele, Miller and Company, forwarded at or about the date of its issuance, and has ever since been, and now is, in the possession of this defendant. That the next news this defendant received concerning the said cotton was the cable report of the aforesaid proceedings instituted on May 7th, 1910, which resulted in the injunction restraining the master of the steamship "Texas" and its aforesaid owner and agent from removing said one hundred bales and other cotton out of the jurisdiction of this Court, on the ground that the shipment of said cotton by Steele, Miller and Company constituted the giving or attempt to give a preference, or an attempt to hinder and delay their creditors in violation of the bankruptcy laws of the United States; and this defendant learned from the report of said proceedings for the first time that it was alleged or charged that the original through bill of lading attached to the draft paid by it was a forgery, and it then for the first time had reasonable cause to believe that the said one hundred bales of cotton which it had paid for as aforesaid had not been shipped

on the date it had until then believed the same to have been shipped, namely, on the date of the original through bill of lading. This defendant accordingly avers that, if it be true that said bill of lading attached to said draft was forged and spurious, and if Steele, Miller and Company did not
43 deliver the cotton described therein to the said railroad company at the date of said bill of lading, but at a subsequent date, this defendant was in entire ignorance thereof, and never knew and had no reasonable cause to believe, that it had been the victim of any such fraud until after the proceedings in this Court against Steele, Miller and Company had been instituted between May 7th and 13, 1910, and brought to its attention; that until such proceedings it rested secure in the belief that the cotton it had paid was on its way to Havre and would be delivered to it on surrender of said through bill of lading.

That subsequent investigation, in the light of the disclosures evoked by the bankruptcy proceedings of Steele, Miller and Company, has led this defendant to believe that the said one hundred bales of cotton were not delivered to the said railroad company at the date of said through bill of lading; and it avers that Steele, Miller and Company either had said cotton in its possession at the time or subsequently acquired the same for the purpose of delivering it to this defendant; and that at some time prior to April 6, 1910, Steele, Miller and Company marked said cotton to correspond with said draft and attached documents, for the purpose and with the effect of appropriating the same to said draft and the rights of this defendant in the premises; and in further appropriation of said cotton and in further performance of its obligation to deliver the same to this defendant from whom it had received full payment therefor, Steele, Miller and Company, as this defendant is informed and believes, delivered said one hundred bales of cotton so marked to the said railroad company for transportation to the port of New Orleans, and thence by steamship of the "French Line" for transportation to Havre and delivery to this defendant.

That said cotton reached the Port of New Orleans prior to April 25, 1910; that Steele, Miller and Company then acting through its local agents or representatives, delivered
44 up the railroad bill of lading under which the cotton had been brought to New Orleans and received in

exchange therefor the said bill of lading issued by the Compagnie Generale Transatlantique as aforesaid and transmitted the same to this defendant; that the actual and intended effect of the aforesaid acts and doings of Steele, Miller and Company was to deliver to this defendant the said one hundred bales of cotton, to the delivery of which it was entitled and the purchase price of which it had fully paid, as long ago as February, 1910.

That the fact that the said original through bill of lading was forged or spurious did not destroy, or essentially alter the nature of, the rights and obligations of the parties; that Steele, Miller and Company became bound, if they did not have the cotton, to acquire the same and deliver it to this defendant, and this defendant became entitled to said cotton as soon as acquired and appropriated to the obligation arising out of the aforesaid transactions; that accordingly this defendant became entitled to said 100 bales of cotton as soon as Steele, Miller and Company made a definite and specific appropriation thereof in fulfillment of their aforesaid obligation, which was done as soon as that firm selected said one hundred bales of cotton and marked the same to correspond with the said first railroad bill of lading and the draft to which it was attached, and certainly was such appropriation effected when it subsequently delivered said cotton so marked to the carrier for transportation to New Orleans and thence to Havre, for the purpose of being delivered to this defendant, by whom the cotton had already been fully paid for as aforesaid; and the delivery and transfer of said cotton to this defendant was consummated and perfected by the delivery of the same to the ocean carrier and the forwarding of said ocean bill of lading therefor to this defendant.

That, prior to the institution of said cause No.
45 14,219 and prior to any bankruptcy proceedings anywhere against Steele, Miller and Company, said firm had received payment in full for said cotton and had completely divested itself of the title, ownership and possession of said cotton, and the same had been completely vested, as aforesaid, in this defendant; that at the time when this defendant acquired its right or title to said cotton it did not know and had no reasonable ground for believing that a preference was being given or intended by the transfer to it of such right and

title, that accordingly its right and title to said cotton is superior to that of the complainant trustee.

10. It avers that it has fully set forth the facts constituting the transactions between it and Steele, Miller and Company, and that it has a right to ask this Honorable Court, as it now does, to define, recognize and enforce its rights in, to or in respect to said cotton; that whether it has the full and complete title thereto, as it is advised and so claims, or whether it has a qualified ownership or special property therein, or an equitable lien or charge or a right in the nature of a pledge, its rights or title to said cotton were not created by any voidable or preferential transfer, are superior to any rights or title of complainant and entitle it to be awarded said cotton or its proceeds and to a dissolution of the injunctive and restraining orders heretofore issued in this cause, as well as in said cause No. 14,219.

11. It avers that by the procuring or issuing of said alleged spurious through railroad bill of lading for said cotton and forwarding the same to it with said draft attached and accepting the proceeds of said draft, Steele, Miller and Company warranted its title to said coton and that the same had been delivered to the carrier for this defendant and is estopped to deny the same and is estopped to deny this defendant's right and title to the cotton after the same was selected, marked and appropriated as aforesaid, and this estoppel operates equally against the complainant trustee and the general creditors of Steele, Miller and Company and all other persons who are disputing this defendant's rights to said cotton.

46

12. This defendant respectfully submits that the restraining and injunctive orders issued in said cause No. 14,219 and in this cause were improvidently ordered; that this Court is and was without jurisdiction to render the same or to give complainant the relief he seeks; that at the time of the institution of said cause No. 14,219 and of the present suit, the bankrupts, Steele, Miller and Company, had parted with both the ownership and the possession of the said one hundred bales; that neither the receiver nor the trustee in bankruptcy has or had any right to proceed in rem against said property;

that his only remedy was and is a personal suit against the creditors alleged to have received the prohibited preference, and this Court has not and never had, any jurisdiction in personam over this defendant; that the appearance which this defendant has been compelled to make under protest to protect its property as aforesaid should not be construed and cannot be construed as a voluntary appearance giving this Court full jurisdiction over it.

This defendant further submits that should this Court maintain its jurisdiction to decide upon the merits the issues presented herein, then this defendant is entitled to be awarded the said cotton or its proceeds.

This defendant specially reserves all its rights and claims against the owners and agents of the steamship "Texas," and against said vessel, which it may have in the premises, and especially as the holder and owner of the said port or custody bill of lading.

Wherefore, this defendant prays that said bill of complaint be dismissed for want of jurisdiction in this Court to grant the relief prayed for, the restraining orders and injunction heretofore issued being dissolved, and a reference ordered to ascertain the damages this defendant has sustained by
47 reason of said injunctive orders and its right to recover the same reserved.

And in the alternative, if its objections to the jurisdiction be overruled, this defendant prays that complainant's demands be rejected and that this defendant be decreed to be entitled to the within described one hundred bales of cotton and that the same be ordered to be delivered to it, or be permitted to be transported by a steamship of the said Compagnie Generale Transatlantique to Havre under and in accordance with the said bill of lading issued by said company. And, likewise in the alternative, this defendant prays that if this Court rejects its claim to the ownership and possession of said cotton then that the Court will recognize and enforce such special property or equitable lien or charge or other right in or to said cotton or its proceeds to which this defendant is entitled in the premises and which to the Court shall seem meet and just, and for such other and general relief as may be just and equitable.

(Signed) DENEGRE & BLAIR,
Solicitors for Defendant, the Credit Havrais.

48 HEARING AND ORDER THAT INJUNCTION ISSUE ON COMPLAINANT FURNISHING BOND.

Extract From the Minutes, November Term, 1910.

New Orleans, Friday, February 10th, 1911.

Court met pursuant to adjournment.

Present: Hon. Rufus E. Foster, Judge.

J. A. E. Pyle, Trustee,

vs. No. 14,277.

Texas Transport and Terminal Company, et als.

The application of complainant for an injunction pendente lite herein, was called.

Present: Messrs. Dufour & Dufour, Solicitors for Complainant.

Present: George H. Terriberry, Esq., Solicitor for Texas Transport & Terminal Co., et als., Defendants.

Present: Messrs. Denegre & Blair, Solicitors for Credit Havrais, Defendant.

Whereupon, after hearing the solicitors for the respective parties, it is ordered that an injunction pendente lite issue herein as prayed for upon complainant, J. A. E. Pyle, trustee, furnishing additional bond, with good and sufficient surety to be approved by the Court, in the sum of five hundred dollars ($500.00), payable to defendants, and conditioned to satisfy any damages suffered by any of them by reason of the issuance of said injunction.

49 RULE TO RELEASE COTTON ON BOND, ETC.

Filed February 10th, 1911.

United States District Court, Eastern District of Louisiana, New Orleans Division.

J. A. E. Pyle, Trustee,
vs. No. 14,277.
Texas Transport and Terminal Company, et als.

On motion of Denegre and Blair, solicitors for the Credit Havrais, a defendant herein, still appearing as heretofore under protest and reserving the benefit of its demurrer to the jurisdiction of this Court, and, on suggesting to the Court that the said defendant desires to release the cotton referred to in the complainant's bill from the operation of the injunctive orders herein rendered by substituting a bond therefor so that said cotton may be free from any claims of any of the parties to this cause and from any costs or charges growing out of this cause, it is ordered that the complainant and defendants, the Texas Transport and Terminal Company and the Compagnie General Transatlantique, show cause on Friday, February 10, 1911, at 11 A. M., why said cotton should not be released and delivered to said defendant or the Compagnie Generale Transatlantique for transportation to Havre and delivery to this defendant or the holder of the bills of lading of said Compagnie Generale Transatlantique issued therefor free from all claims of the parties hereto whether for the cotton or for any costs, expenses or damages incurred or sustained in consequence of this litigation, on this defendant furnishing a bond in favor of complainant, with surety approved by the Court, for the value of said cotton, conditioned upon this defendant producing the said cotton or so much thereof as this Court in this cause may decree the said trustee complainant to be entitled

50 to or paying to said trustee complainant the value of said cotton or of the part thereof to which he may be decreed to be entitled by this Court in this cause, the value to be the value at the time of the release as shown by the amount of the bond; the bond to take the place of the cotton and the giving of the bond to be otherwise without preju-

dice to the status, rights or obligations of any of the parties to this cause.

Service accepted.

(Signed) DUFOUR & DUFOUR,
Sols. for Trustee.

(Signed) GEO. H. TERRIBERRY.

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51 ORDER FOR DELIVERY OF COTTON ON BOND.

Filed February 10th, 1911.

United States District Court, Eastern District of Louisiana, New Orleans Division.

J. A. E. Pyle, Trustee,
vs. No. 14,277.
Texas Transport and Terminal Company, et als.

The rule taken by the Credit Havrais, a defendant herein, for leave to release the cotton referred to in complainant's bill from the operation of the injunctive orders herein entered by substituting a bond therefor came on this day to be heard and was argued by counsel, the plaintiff in rule, the Credit Havrais, being represented by Denegre & Blair, its solicitors of record, the complainant, J. A. E. Pyle, trustee, by Dufour and Dufour, his solicitors of record, and defendants, the Texas Transport and Terminal Company and the Compagnie Generale Transatlantique, by George H. Terriberry, their solicitor of record; and the Court being fully advised in the premises, it is ordered that the one hundred bales of cotton referred to in the complaint herein and hereafter more particularly described shall be released from the operation of the injunction or restraining orders herein issued or heretofore issued by this Court on the said Credit Havrais furnishing a bond in favor of the complainant trustee, with surety approved by the Court, for the value of said cotton conditioned upon the Credit Havrais producing the said cotton or so much thereof as this Court in this cause may decree the said complainant trustee to be entitled to or paying to said complainant trustee the value

of said cotton or the part thereof to which he may be decreed to be entitled by this Court in this cause, the value to be the value at the time of the release as shown by the amount of the bond, the cotton covered by this order being numbered and marked as follows:

52 S R U I 1/100.

It is further ordered that on said bond being furnished the cotton shall be released and discharged from all claims of any party to this cause and especially from all claims for any costs, expenses or damages growing out of this litigation or any injunctive orders of this Court, the bond to take the place of the cotton and the giving of the bond to be otherwise without prejudice to the status, rights and obligations of any of the parties to this cause.

It is further ordered that the aggregate value of said one hundred bales of cotton is hereby fixed at seventy-four hundred and thirty-seven and 50/100 dollars ($7,437.50), all parties consenting to said valuation, and the amount of the bond herein authorized is fixed at said sum of $7,437.50. It is further ordered that when the bond herein provided for shall have been furnished, the cotton so released shall be free from all costs, charges and expenses, including expenses of insurance, drayage and storage, and said expense of insurance, drayage and storage if not previously paid by the trustee as herein provided, shall be taxed as costs in this suit and shall be recoverable under the bonds heretofore given by the trustee. It is further ordered that the trustee forthwith apply to the Honorable H. C. Niles, United States Judge for the Northern District of Mississippi, for authority to pay the Compagnie Generale Transatlantique the said storage charges and insurance premiums which the Compagnie Generale Transatlantique has either paid out or become liable for in preserving the said cotton, and when said trustee is so authorized, he shall have the right to apply to the Court for a proportionate reduction of the several bonds heretofore furnished by him to the extent of said cash payment.

It is further ordered that on defendant, the Credit Havrais, filing with the clerk of this Court a bond of the character and amount above provided for, and which has been ap-

53 proved by this Court or a Judge thereof, all injunc-

tive orders of this Court in respect to said cotton shall be released and dissolved, and the clerk of this Court is directed then to so notify the defendants, the Compagnie Generale Transatlantique and the Texas Transport and Terminal Company.

(Signed) RUFUS E. FOSTER, Judge.

O. K.
(Signed) J. P. B.
(Signed) G. H. T. Feb. 10/11.
(Signed) W. C. D.

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54 BOND OF J. A. E. PYLE, TRUSTEE.

Filed February 14th, 1911.

United States District Court, Eastern District of Louisiana.

J. A. E. Pyle, Trustee,
vs. No. 14277.
Texas Transport & Terminal Co., et als.

Know all men by these presents, that we, J. A. E. Pyle, trustee of Steele, Miller & Company, Bankrupt, appointed by and acting under authority of the District Court of the United States for the Northern District of Mississippi, as principal, and Southwestern Surety Insurance Company of Oklahoma, as surety, are held and firmly bound unto the Compagnie Generale Transatlantique, the Texas Transport & Terminal Company, F. Scheuch & Company and Credit Havrais, defendant herein, for the use and benefits of defendant in the below mentioned suit, in the full and true sum of five hundred dollars ($500.00), lawful money of the United States of America, for the payment whereof we bind ourselves, our heirs, executors, successors and assigns firmly by these presents.

Thus done and signed in the City of New Orleans, State of Louisiana, this fourteenth day of February, A. D. 1911.

Now therefore, the condition of the above obligation is such that,

Whereas, the said J. A. E. Pyle, trustee in bankruptcy of Steele, Miller & Company, did, in the proceedings No. 14277

of the docket of the United States District Court, Eastern District of Louisiana, in Equity, entitled "J. A. E. Pyle, Trustee, vs. Compagnie Generale Transatlantique, et als.," obtain and [an] injunction pendente lite, restraining and enjoining the Texas Transport & Terminal Company and the Compagnie Generale Transatlantique, and each of them, and each of their servants, agents and employees until the further orders of the Court from removing from the jurisdiction of the Court the 100 bales of cotton described in the pleadings filed in this cause upon condition that the said trustee shall furnish bond.

Now therefore, if the above mentioned J. A. E.
55 Pyle, trustee, shall pay, or cause to be paid, all damages caused by the issuance of said injunction pendente lite, and the costs of this cause in connection therewith in the event that said injunction pendente lite is dissolved or vacated as having been wrongfully issued, or because the said acts are improperly enjoined, then this bond to be void, otherwise to remain in full force and effect.

(Signed) J. A. E. PYLE,
By WM. C. DUFOUR, Counsel of Record.
SOUTHWESTERN SURETY INSURANCE CO.,
(Signed) By JOS. BAYLE,
Atty. in Fact.

[Seal]

Approved.
(Signed) RUFUS E. FOSTER, Judge.

56 INJUNCTION.

Issued February 14th, 1911.

United States of America.
District Court of the United States, Eastern District of Louisiana.

J. A. E. Pyle, Trustee,
vs. No. 14277.
Texas Transport & Terminal Company, et als.

The President of the United States of America,

To the Texas Transport & Terminal Company and the Compagnie Generale Transatlantique, Greeting:

Whereas, it has been represented unto us in our said District Court on the part of J. A. E. Pyle, trustee in bankruptcy of Steele, Miller & Company, in a bill in equity lately exhibited against you and each of you touching certain matters and things therein set forth:

Now, therefore, in consideration of the premises and of the allegations in said bill of complaint contained, you, the said Texas Transport & Terminal Company and the Compagnie Generale Transatlantique, your attorneys and each of you, are hereby commanded and strictly enjoined, under the penalty of the law, that you absolutely refrain and desist from removing from the jurisdiction of this Court the 100 bales of cotton described in the said bill filed in this cause, and that you remain so inhibited and enjoined until the further order of our said Court in the premises.

Witness, the Honorable Rufus E. Foster, Judge of said Court, at the City of New Orleans, this 14th day of February in the year of our Lord, 1911.

[Seal]

(Signed) FRANK H. MORTIMER, Clerk.

Clerk's Office:
A true copy.

(Sig.) FRANK H. MORTIMER,
[Seal] Clerk.

57 [Indorsed:] No. 14277. U. S. District Court,

Eastern District of Louisiana, New Orleans Division. J. A. E. Pyle, Trustee, vs. Texas Transport & Terminal Company, et als. Injunction to—

MARSHAL'S RETURN ON INJUNCTION.

Filed April 13th, 1912.

Received by U. S. marshal, New Orleans, La., Feby. 15/11, and I was instructed by counsel for plaintiff to hold this writ for further instructions. On April 13/12 not having been instructed by plaintiffs counsel, I return this writ unexecuted.

VICTOR LOISEL,
U. S. Marshal.

(Signed) By T. I. GALBRETH, Deputy.

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58 RELEASE BOND OF CREDIT HAVRAIS.

Filed February 15th, 1911.

United States District Court, Eastern District of Louisiana.

J. A. E. Pyle, Trustee,
vs. No. 14277.
Texas Transport & Terminal Company, et als.

Know all men by these presents, that we, the Credit Havrais, as principal obligor, and the American Surety Company of New York, as surety, are held and firmly bound, jointly and severally, unto J. A. E. Pyle, trustee in bankruptcy for Steele, Miller & Company, Bankrupts, in the sum of seven thousand, four hundred and thirty-seven dollars and fifty cents ($7,437.50) for the payment whereof well and truly to be made we bind ourselves, our heirs, executors, administrators and successors, jointly and severally firmly by these presents.

Signed and sealed this 14th day of February, A. D. 1911.

The condition of this obligation is such that,

Whereas, in a certain cause now pending in the United States District Court for the Eastern District of Louisiana,

New Orleans Division, No. 14,277 of the docket of said Court and entitled, "J. A. E. Pyle, Trustee, vs. Texas Transport & Terminal Company, et als.," the said Pyle made claim to one hundred bales of cotton fully described in the pleadings in said cause, and obtained from said Court an order or injunction prohibiting the removal of said cotton from the jurisdiction of this Court, and

Whereas, On the tenth day of February, 1911, an order was rendered in said cause giving leave to the said Credit Havrais to release the said cotton from the operation of said injunction by sustaining a bond therefor.

Now, therefore, if the said United States District
59 Court in said cause shall decree that the said obligee, the trustee in bankruptcy, is entitled to said cotton or any part of it, and if the said Credit Havrais shall produce said cotton or the part thereof to which the obligee may be so decreed to be entitled, or pay to the obligee the value of said cotton, or of the part thereof to which the obligee may be so decreed to be entitled, the value to be the value at the time of the release as shown by the amount of the bond, then this obligation shall be null and void; otherwise to be of full force and effect.

CREDIT HAVRAIS,

(Signed) By J. P. BLAIR, Attorney in Fact.

AMERICAN SURETY COMPANY OF NEW YORK,

(Signed) By J. H. FULTON,
Resident Vice-President.

Attest.

(Signed) PETER F. PESCUD,
[Seal] Resident Assistant Secretary.

Approved.

(Signed) RUFUS E. FOSTER, Judge.

Approved.

(Signed) W. C. DUFOUR.

60 REPLICATION TO ANSWER OF CREDIT HAVRAIS.

Filed March 6th, 1911.

United States District Court, Eastern District of Louisiana.

J. A. E. Pyle, Trustee,
vs. No. 14,277
Compagnie Generale Transatlantique, et als.

The Replication of J. A. E. Pyle, Trustee Steele, Miller & Company, to the Answer of the Credit Havrais.

This repliant, saving and reserving unto himself all and all manner of advantage of exception to the manifold insufficiency of said answer, for replication thereunto saith:

That he will aver and prove his said bill to be true, certain and sufficient in the law to be answered unto, and that the said answer of the said defendant is uncertain, untrue and insufficient to be replied unto by this repliant; without this, that any other matter or thing whatsoever in the said answer contained, material or effectual to be replied unto, confessed and avoided, traversed or denied, is true; all which matters and things this repliant is and will be ready to aver and prove as this Honorable Court shall direct and humbly prays as in his said bill he hath already prayed.

(Signed) W. A. PERCY,
(Signed) DUFOUR & DUFOUR,
Solicitors.

61 ANSWER OF TEXAS TRANSPORT & TERMINAL CO. AND COMPAGNIE GENERALE TRANSATLANTIQUE AND CLAIM FOR DAMAGES.

Filed June 15th, 1911.

United States District Court, Eastern District of Louisiana.

J. A. E. Pyle, Trustee,
vs. No. 14,277
Texas Transport & Terminal Company, et als.
In Equity.

The Joint and Several Answers of Texas Transport and Terminal Company and of Compagnie Generale Transatlantique.

Now come Texas Transport & Terminal Company and Compagnie Generale Transatlantique, made defendants herein, and these defendants now and at all times saving to themselves any and all manner of benefit or advantage of exception or otherwise that can or may be had or taken to the many errors, uncertainties and imperfections in the said bill contained, for answer thereto, or to so much thereof as these defendants are advised it is material or necessary for them to make answer to, answering, say:

1. The [they] admit that the Compagnie Generale Transatlantique is a corporation created under the laws of the Republic of France, with its domicile in the City of Paris, France, and that Texas Transport & Terminal Company is a corporation organized under the laws of the State of New Jersey; that Compagnie Generale Transatlantique is a common carrier by sea and operates a line of steamers between New Orleans, in Louisiana, and Bordeaux and Havre, in France.

2. They say that, for want of sufficient information, they can neither admit nor deny the allegations contained in the second, third, fourth, fifth and sixth paragraphs of the complaint, relative to the domicile, the business, and the
62 various transactions of Steele, Miller & Co.

3. They say that they believe that the allegations of the seventh paragraph of the complaint are substantially true.

4. For want of sufficient information, they can neither deny nor admit the allegations in the eighth paragraph of the complaint relative to the relations and transactions between Steele, Miller & Company and Scheuch & Company, or between Steele, Miller & Company and the Credit Havrais.

5. Answering the ninth paragraph of the complaint, they say that it is true that on the 7th day of May, 1910, there was on board the steamship "Texas," which said steamer belongs to defendant, Compagnie Generale Transatlantique, 2494 bales of cotton shipped by Steele, Miller & Company, to Havre, shipper's order, notify Scheuch & Company, Havre; that, in the case of J. A. E. Pyle, Receiver, vs. Philip Landgren, Master, Steamship Texas, et als., No. 14219 of the docket of the United States District Court for the Eastern District of Louisiana, these defendants were enjoined, pendente lite, from taking said cotton out of the jurisdiction of this Court. These defendants admit that they caused said cotton, at the expense of said Pyle, receiver, to be discharged from said steamer so that the steamer could proceed on her voyage as she was prepared, ready and going to do when restrained on May 7, 1910, and enjoined on May 9, 1910; they admit that they caused said cotton to be stored in the Kentucky Warehouse, at New Orleans, and they show that they caused said cotton to be insured for the benefit of whom it might concern while the said cotton was so stored.

6. They admit the truth of the allegations contained in the tenth paragraph of the complaint, relative to the refusal of these defendants to deliver said cotton to any person other than the holder of the bills of lading covering same.

63 7. The defendant, the Compagnie Generale Transatlantique is solely and only a common carrier by sea; it has no relation with said cotton except as a common carrier; that it has, as in duty bound and as by law required, obeyed all of the orders of this Honorable Court, in the various cases of Pyle, Receiver, vs. Philip Landgren, Master, Steamship Texas, et als., No. 14,219 of the docket of this

Court, and in the cases of Pyle, Trustee, vs. Texas Transport & Terminal Company, et als., numbered, respectively, 14,240, 14,241, 14,242, 14,243 and 14,277 of the docket of this Court; defendants show that the said injunctions remained in force and were obeyed by these defendants until they were, on the 15th day of February, 1911, notified by Frank H. Mortimer, Clerk of Court, that all injunctive orders in respect of said cotton were released and dissolved; that, thereupon, the Compagnie Generale Transatlantique carried said cotton forward by its first steamer, the Guatemala, and delivered the said cotton to the holders of its bills of lading in Havre, France, and took its said bills of lading on delivering said cotton, its bill of lading being thus accomplished and the responsibility and liability of the Compagnie Generale Transatlantique, and of its agent, the Texas Transport & Terminal Company, in respect of said cotton, being thereupon terminated.

Now, the defendant, the Compagnie Generale Transatlantique, shows that, in obeying the various orders of this Honorable Court, it sustained damages and incurred expenses, which in equity, law, and justice, the Court should require the complainant herein to pay to said defendant. That the damages so sustained by said Compagnie Generale Transatlantique as a result of the aforesaid injunctive orders of this Court, are as follows:

(1) In dead freight on said 2494 bales of cotton, which cotton was delivered to, and placed on board of, the steamship "Texas," and which said cotton was subsequently
64 discharged, the said steamer proceeding on her voyage without said cargo and without any substitute therefor, the amount of said dead freight being $3310.53.

(2) In cost of insurance of said 2494 bales of cotton while in the Kentucky Warehouse from May 10, 1910, to March 9, 1911, paid out in cash by said Compagnie Generale Transatlantique, which amounted to the sum of $2621.54.

(3) In cost of drage [drayage] of said cotton from steamer Texas to Kentucky Warehouse, the storage in said warehouse from May 12, 1910, to March 9, 1911, the drayage to the steamer Guatemala, and remarking the said cotton, for all of

which the said Compagnie Generale Transatlantique owes the said Kentucky Press and is bound to pay, amounting to the sum of $2682.55.

(4) In the cost of detention of the steamer Texas at New Orleans for nine days while her cargo was being discharged and reloaded so as to comply with the injunction of May 9, 1910, the sum of $1,667.20.

(5) The difference between the current rate of freight, that is, thirty-seven (37) cents per one hundred pounds, applying when said cotton was carried forward to destination by the steamship Guatemala, on March 16, 1911, and the bill of lading rate, that is, twenty-six (26) cents per hundred pounds, on 2094 bales weighing 1,055,761 pounds, and twenty-eight (28) cents per hundred pounds on 400 bales weighing 201,943 pounds, at which rate this defendant was, under its said contracts, obligated to carry said cotton, the said difference amounting in the aggregate on the 2494 bales to the sum of $1343.08.

(6) The Compagnie Generale Transatlantique has had to employ an attorney-at-law for counsel throughout these matters, and, also to recover the damages aforesaid, and it prays the Court to allow it at a reasonable sum as counsel fees.

65 The defendant, the Compagnie Generale Transatlantique, shows that, in equity, justice, and law, it should have a decree in its favor and against the complainant in full of all of said damages, with legal interest from the time said damages were sustained until paid.

Wherefore, these defendants pray that the said bill of complaint be dismissed as against these defendants, and for costs; the defendant, the Compagnie Generale Transatlantique prays that there may be a decree in its favor and against the complainant for all the damages sustained, with legal interest thereon from the time said damages were sustained until paid, as fully set out in this answer; these defendants further pray for all such other and general relief as they may, in equity and law, be entitled to receive and the Court competent to grant.

(Signed) GEO. H. TERRIBERRY,
Solicitor for Defendants, Texas Transport & Terminal Company and Compagnie Generale Transatlantique.

66 AMENDED ANSWER.

Filed August 29th, 1911.

In the District Court of the United States for the Eastern District of Louisiana.

J. A. E. Pyle, Trustee,
vs. No. 14,277
Texas Transport & Terminal Company, et al.
In Equity.

Now comes Texas Transport & Terminal Company and Compagnie Generale Transatlantique, the defendants in the above cause, and leave of Court being first had, file the following amendment to the answer filed in this cause on the 15th day of June, A. D. 1911, to-wit:

After the conclusion of the seventh article of the answer, add the following allegations:

"The defendant, the Compagnie Generale Transatlantique, further shows that, for the damages aforesaid, it has a lien and and privilege on all of the 2494 bales of cotton which were on board its said steamer Texas, but that, as a bond was furnished by the defendant herein, Credit Havrais, equal to the value of the cotton covered by bills of lading held by it, the said bond to stand in the place and stead of the said cotton, and, as it was ordered by the Court, at the suggestion of all parties hereto, that all claims against said cotton should be referred to said bond, the claim of said Compagnie Generale Transatlantique against said cotton and the lien and privileges in its favor on said cotton now holds and applies as against said bond so filed by the defendant herein, Credit Havrais, said bond standing in the place and stead of said cotton."

67 And amend the prayer of said answer so as to read as follows:

"Wherefore, these defendants pray that the said bill of complaint be dismissed as against them, and for costs; the defendant, the Compagnie Generale Transatlantique, prays that there may be a decree in its favor and against the com-

plainant for all the damages sustained, with legal interest thereon from the time said damages were sustained until paid, as fully set out in the answer; and in the alternative, the defendant, the Compagnie Generale Transatlantique, prays that if this Court rejects its claim for damages, attorney's fees and interest against the complainant herein, then that the Court will grant and award such claim for all damages, attorney's fees and interest against said cotton, or its proceeds, or the bond aforesaid standing in lieu thereof, with full recognition of its lien and privilege on said cotton, or its proceeds or the bond which stands in lieu thereof, as this defendant may be entitled to have in the premises and which to the Court shall seem meet and just, and for such other general relief as to the Court shall seem proper.

(Signed) GEO. H. TERRIBERRY,
Sol. for Texas Transport & Terminal Co. and
Compagnie Generale Transatlantique.

Order.

Let the foregoing amended answer be filed.

(Signed) RUFUS E. FOSTER,
United States Judge.

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68 HEARING IN PART AND CONTINUANCE.

Extract From the Minutes.

November Term, 1911.

New Orleans, Monday, November 20th, 1911.

Court met.

Present: Hon. Rufus E. Foster, Judge.

J. A. E. Pyle, Trustee,
vs. No. 14,277
Texas Transport and Terminal Company, et als.

This cause came on to be heard this day upon the pleadings and proofs as specified in the notes of evidence offered in behalf of the respective parties:

Present: Messrs. Dufour & Dufour and W. A. Percy, Solicitors for Complainant.

Present: George H. Terriberry, Esq., Solicitor for Texas Transport & Terminal Co., and Compagnie Generale Transatlantique, Defendants.

Present: Messrs. Denegre & Blair, Solicitors for Credit Havrais, Defendant;

and was heard in part, and continued until Tuesday, November 21st, 1911, at ten o'clock A. M., for further argument.

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69 NOTE OF EVIDENCE OF COMPLAINANT.

United States District Court, Eastern District of Louisiana.

J. A. Pyle, Trustee,
vs. No. 14,277
Texas Transport & Terminal Company, et als.

Solicitors for complainant offer, produce, read and file in evidence in this case the following:

Stipulation of counsel as to the use in cause Nos. 14,240, 14,241, 14,242, 14,243 and 14,277 of the evidence taken and filed in any one of said causes.

Stipulation of counsel as to testimony of W. E. Kennedy.

The testimony of Edward S. Elliott.

The testimony of W. H. Hendren, together with the exhibits attached thereto, the first of said exhibits being attached to the record herein filed and marked "Complainant-26;" the second being Exhibit "No. 11," to-wit, cables offered in connection with the testimony of W. H. Hendren.

The testimony of Bernard Dessommes, together with exhibit, to-wit, copies of the Havre Bulletin of date April 27, 1910, and April 28, 1910, the said exhibit being attached to an affidavit of Wm. C. Dufour, filed and used in connection with the proceedings for a preliminary injunction, and now made Exhibit "15."

The testimony of Henry E. Bory, together with the same

exhibit offered in connection with the testimony of Bernard Dessommes.

The testimony of John H. Fulton, A. Breton, Jeff D. Hardin, Jr., together with the statement entitled "Loading Record," furnished by the said Jeff D. Hardin, Jr., which said exhibit is marked Exhibit "No. 10."

The testimony of C. H. G. Linde, together with Exhibit "1," being a letter from Scheuch & Company of date January 20, 1910; Exhibit "2," a letter from Scheuch & Company of date April 26, 1910; Exhibit "3," a letter from
70 Scheuch & Company of date March 22, 1910; Exhibit "4," a statement from Scheuch & Company of date April 2, 1910; Exhibit "5," a letter from Scheuch & Company of date April 1, 1910; Exhibit "6," cablegram to Scheuch & Company of date April 28, 1910; Exhibit "7," statement of drafts drawn by Steele, Miller & Company on Scheuch & Company and claimed by Linde to have been taken up April 29, 1910; Exhibit "8," a statement of Scheuch & Company of date April 29, 1910.

The testimony of Charles Janvier and Thomas Holford, together with extract from the Liverpool Daily Post and Mercury of April 22, 1910, attached to the affidavit of Wm. C. Dufour used in the proceedings on the application for a preliminary injunction, the said exhibit being marked No.

The testimony of Edward S. Butler.

The testimony of Edward D. Nicholson.

All of said testimony taken before Frank H. Mortimer, special examiner, at his office in the City of New Orleans, on the 7th, 9th, 15th, 16th and 22nd days of June, 1911.

A certified copy of the proceedings in the case of S. B. & E. Cohn, et al., vs. L. C. Steele, et al., No. 157, in equity, of the Docket of the United States Circuit Court for the Eastern Division of the Northern District of Mississippi, being Exhibit "No. 14."

Certified copy of the proceedings in the matter of Knoop, Fabarius, et al. vs. Steele, Miller & Company, No. 123 in bankruptcy, in the District Court of the United States for the Eastern Division of the Northern District of Mississippi, particularly the petition for adjudication in involuntary bankruptcy, the certificate of the Clerk showing the date of the filing thereof and the orders of the Court in the premises. The appointment of J. A. E. Pyle as temporary receiver and

the bond of J. A. E. Pyle as temporary receiver. The order of reference to John W. Davis, referee in bankruptcy, the adjudication in bankruptcy by the said John W. Davis. The certificate of the said John W. Davis, referee in bankruptcy, showing the election of a trustee, the bond of said
71 trustee, together with the certificate of the Clerk of the District Court of the United States for the Northern District of Mississippi, showing that John W. Davis was at the time of the said proceedings the referee in bankruptcy of said Court, and is now the referee of the said Court in bankruptcy; the same being Exhibit "No. 12" and Exhibit No. "13."

Exhibits 2 to 53, inclusive, attached to the deposition of Adolph Riss, the same being the drafts, through bills of lading, invoices, insurance certificates and custody bills of lading called for during the examination of Mr. Linde.

Exhibit 1 attached to the deposition of Franz Lysell, called for as above.

Exhibits 1 to 34, inclusive, attached to the depositions of Elisee Paul Dubois, called for as above.

Exhibits 9 to 13, inclusive, attached to the deposition of Emile Level, called for as above.

Exhibits 2 to 7, inclusive, attached to the deposition of Jules Castel, called for as above.

Admission concerning testimony of J. A. E. Pyle, trustee.

Stipulation of counsel entitled in all the above causes whereby all exhibits annexed to the foregoing depositions except those included in the above offer have, by agreement, been withdrawn because in the opinion of counsel they were irrelevant, cumulative or duplicates.

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72 United States District Court, Eastern District of Louisiana, New Orleans Division.

J. A. E. Pyle, Trustee,
vesus No. 14,277
Texas Transport & Terminal Company, et als.

Note:—

Evidence offered and filed on behalf of complainant, and

referred to in his Note of Evidence, copied into the Transcript of Appeal in the case of J. A. E. Pyle, Trustee, vs. Texas Transport & Terminal Company, et als., No. 14,240 of the docket of the United States District Court, Eastern District of Louisiana, New Orleans Division, in accordance with the Praecipe for the Transcript of Appeal.

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73 NOTE OF EVIDENCE ON BEHALF OF THE CREDIT HAVRAIS.

Filed November 20th, 1911.

United States District Court, Eastern District of Louisiana, New Orleans Division.

J. A. E. Pyle, Trustee,
vs. No. 14,277
Texas Transport and Terminal Company, et als.

Note of Evidence on Behalf of the Credit Havrais.

The undersigned solicitors for the above named defendant offer, produce, read and file in evidence in this cause the following depositions, exhibits and stipulations:

1. Stipulation of counsel as to the use in causes Nos. 14,240, 14,241, 14,242, 14,243 and 14,277 of evidence taken and filed in any one of said causes.

2. The deposition of Ferdinand Scheuch, together with the following exhibits: Nos. 1, 2, 3, and 4, and 5, 12 and 13, as types of exhibits from 4 to 13. Nos. 14 and 18 as types of exhibits 14 to 18, and 18bis. Exhibits 19 to 29 inclusive. Exhibits Nos. 30 and 46 as types of 30 to 46. Exhibits Nos. 47 and 90 as types of Exhibits 47 to 90. Exhibits 91 and 659 as types of exhibits from 91 to 659. Exhibits 660 to 671 inclusive.

3. Deposition of Albert Schilling.

4. Deposition of Adolph Riss, and the following exhibits

annexed and referred to therein: Exhibits 1 to 35 inclusive. Exhibits 59 and 60. Exhibits 122 to 125 inclusive.

5. The deposition of Franz Lysell, and the following exhibits annexed and referred to therein: Exhibits 1, 2, 3, 5, 6, 7, 13 and 14.

6. The deposition of Elisee Paul Dubois, and the following exhibits annexed and referred to therein: Exhibits 1 to 36 inclusive. Exhibits 58 to 62 inclusive.

7. The deposition of Emile Level and the following exhibits annexed and referred to therein: Exhibits
74 Nos. 3, 5, 6, and 9 to 13 inclusive.

8. The deposition of Jules Castel and the following exhibits annexed and referred to therein: Exhibits Nos. 2 to 7 inclusive. Exhibits Nos. 9 to 12 inclusive.

All of the above depositions having been taken under commission issued herein before John Preston Beecher, United States Consul at Havre.

9. Stipulation of counsel entitled in all the above causes whereby all the exhibits annexed to the foregoing depositions except those included in the above offer, have, by agreement, been withdrawn because in the opinion of counsel they were irrelevant, cumulative or duplicates.

(Signed) DENEGRE & BLAIR,
Solicitors for Credit Havrais.

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75 United States District Court, Eastern District of Louisiana, New Orleans Division.

J. A. E. Pyle, Trustee,
versus No. 14,277
Texas Transport & Terminal Company, et als.

Note:—

Evidence offered and filed on behalf of the Credit Havrais, and referred to in its Note of Evidence, copied into the

Transcript of Appeal in the case of J. A. E. Pyle, Trustee, vs. Texas Transport & Terminal Company, et als., No. 14,240 of the Docket of the United States District Court, Eastern District of Louisiana, in accordance with the Praecipe for the Transcripts of Appeal.

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76 RESUMED HEARING AND SUBMISSION.

Extract From the Minutes.

November Term, 1911.

New Orleans, Tuesday, November 21st, 1911.

Court met pursuant to adjournment.

Present: Hon. Rufus E. Foster, Judge.

J. A. E. Pyle, Trustee,

vs. No. 14,277

Texas Transport and Terminal Company, et als.

This cause, as continued from Monday, November 20th, 1911, for further hearing, was this day resumed.

Present: The solicitors for the respective parties;

and was argued and submitted, when the Court took time to consider.

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77 DECREE.

Filed January 1st, 1912.

United States District Court, Eastern District of Louisiana.

J. A. E. Pyle,

vs. No. 14,277

Credit Havrais, Compagnie Generale Transatlantique, Texas Transport and Terminal Company, and Scheuch and Company.

In Equity.

Decree.

This cause came on to be heard at this term and was argued by counsel and taken under advisement by the Court, and

upon consideration thereof, it is now ordered, adjudged and decreed as follows, viz.:

That complainant's bill be and it is hereby dismissed as to defendant Credit Havrais at cost of complainant, to be taxed; that the injunction pendente lite heretofore issued in this cause be and the same is hereby dissolved, and that Credit Havrais be and the same is hereby declared to be the owner of the cotton referred to in the bill of complaint and covered by the bond herein given; and that the demands of the complainant against the said Credit Havrais be denied.

The Court expressly reserved for further consideration all matters not herein expressly provided for, including the rights and claims of the Compagnie Generale Transatlantique against complainant, and the rights and claims of all parties defendant, under the injunction bonds herein given, as well against the sureties on said bonds as against the complainant, and as to all such matters the bill is retained for further proceedings.

January 1st, 1912.

(Signed) RUFUS E. FOSTER, Judge.

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78 PETITION AND ORDER FOR APPEAL.

Filed March 1st, 1912.

United States District Court, Eastern District of Louisiana.

J. A. E. Pyle, Trustee,
versus No. 14,277
Texas Transport & Terminal Company.

The petition of J. A. E. Pyle, trustee, complainant in the above numbered and entitled cause, with respect represents:

That complainant considers himself aggrived by the decree made and entered in this cause on the 1st day of January, 1912, and

That he desires and hereby appeals from said decree to the United States Circuit Court of Appeals for the Fifth Circuit,

and presents herewith, and makes part of this petition as Exhibit "A" hereto, assignments of error in said decree.

Wherefore, the premises considered, petitioner prays that his appeal may be allowed to operate as a supersedeas upon the giving of a bond with surety in an amount to be fixed by the Court and conditioned according to law, and that a transcript of the whole record, proceedings, testimony and papers upon which said decree was made, duly authenticated, be sent to the United States Circuit Court of Appeals for the Fifth Circuit in the manner and form and at the time prescribed by law and by the practice of said Court; that citation issue to the Credit Havrais, through its solicitors of record, Denegre & Blair; to Compagnie Generale Transatlantique through its agent, W. H. Hendren, to the Texas Transport & Terminal Company through its agent, W. H. Hendren, in the manner and form prescribed by law; for a correction of said errors and a reversal of said decree, and for such other and further relief as may be proper in the premises.

(Signed) W. A. PERCY,
DUFOUR & DUFOUR,

Services of above petition accepted.
3/1/12 (Signed) DENEGRE & BLAIR,
Solrs.
(Signed) GEO. H. TERRIBERRY,
Sol. for Compagnie Generale Transatlantique
and Texas Transport & Terminal Co.

79 ORDER.

Considering the foregoing petition, it is ordered that an appeal be allowed to the said complainant, returnable to the United States Circuit Court of Appeals for the Fifth Circuit, within thirty days from the date thereof, and that same operate as a supersedeas, upon the said complainant furnishing bond with a good and solvent surety, according to law, in the sum of two hundred dollars.

(Signed) RUFUS E. FOSTER, Judge.

Mar. 1/12.

80 ASSIGNMENTS OF ERROR.

Filed March 1st, 1912.

United States District Court, Eastern District of Louisiana.

J. A. E. Pyle, Trustee,
versus No. 14277
Texas Transport & Terminal Company, et als.

Assignments of Error.

Now comes J. A. E. Pyle, trustee in bankruptcy of Steele, Miller & Company, appellant, by his attorneys, and says that, in the record and proceedings aforesaid, of the United States District Court for the Eastern District of Louisiana, in the above entitled cause and in the decree therein rendered on the 1st day of January, 1912, manifest error hath intervened to the prejudice of said appellant, in this, to-wit:

(1) The Court erred in rendering and entering a decree dismissing the bill of complaint of J. A. E. Pyle, trustee in bankruptcy of Steele, Miller & Company.

(2) The Court erred in rendering and entering a decree in favor of the defendant.

(3) The Court erred in holding that the Bank of Mulhouse was the owner of the cotton described in the bill of complaint and covered by the bond herein given.

(4) The Court erred in holding that, by delivering the actual cotton to the carriers, Steele, Miller & Company intended to appropriate, and did appropriate, said cotton to the fraudulent bills of lading theretofore acquired and held by the defendant, the Bank of Mulhouse.

(5) The Court erred in holding that the defendant bank was in fact a purchaser of actual cotton from Steele, Miller & Company.

(6) The Court erred in failing to find and hold that the

defendant knew, or ought to have known, or had reasonable grounds to believe, that Steele, Miller & Company were insolvent at the time the defendant received the genuine bills of lading representing cotton actually shipped, referred to in the bill of complaint.

(7) The Court erred in failing to find and to hold that Steele, Miller & Company, by delivering the genuine bills of lading to the defendant representing cotton actually shipped, thereby intended to prefer and did prefer said defendant to and over its other creditors and thereby intended to grant, and did grant, an illegal and unfair preference to the defendant, and that the defendant did receive a preference within the meaning and intendment of the Bankrupt Statute of the United States.

Wherefore, the said J. A. E. Pyle, trustee in bankruptcy of Steele, Miller & Company, appellant, prays that for the errors aforesaid and other errors appearing in the record in the above entitled cause to the prejudice of appellant, the said decree be reversed and annulled and that appellant be granted such relief as may be proper, and appellant shall ever so pray.

(Signed) W. A. PERCY.
DUFOUR & DUFOUR.

BOND.

Filed March 1st, 1912.

United States District Court, Eastern District of Louisiana.

J. A. E. Pyle, Trustee,
versus No. 14,277
Texas Transport and Terminal Company, et als.

Know All Men By These Presents: That we, J. A. E. Pyle, trustee in bankruptcy of Steele, Miller & Company, as principal, and Southwestern Surety Insurance Company, of Oklahoma, as sureties, are held and firmly bound unto the

Texas Transport & Terminal Company, Compagnie Generale Transatlantique, the Credit Havrais, and each of them, in the full and just sum of two hundred dollars to be paid to the said Texas Transfer & Terminal Company, Compagnie Generale Transatlantique, the Credit Havraix [Havrais], certain attorney, executors, administrators or assigns, to which payment, well and truly to be made, we bind ourselves, our heirs, executors and administrators, jointly and severally, by these presents. Sealed with our seals and dated this 1st day of March, in the year of our Lord, one thousand nine hundred and twelve.

Whereas, lately at a session of the United States District Court, holding sessions in and for the Eastern District of Louisiana, in a suit depending in said Court, between J. A. E. Pyle, trustee, and the Texas Transport & Terminal Company, et als., number 14,277 of the docket of said Court, a decree was rendered against the said J. A. E. Pyle, trustee, and the said J. A. E. Pyle, trustee, having obtained an appeal and filed a copy thereof in the Clerk's Office of the said Court to reverse the decree in the aforesaid suit, and a citation directed to the said Texas Transport & Terminal Company, Compagnie Generale Transatlantique, the Credit Havraix [Havrais], citing and admonishing them to be and appear before the United States Circuit Court of Appeals for the Fifth Circuit, to be holden at New Orleans, Louisiana, within 30 days from the date thereof.

Now, the condition of the above obligation is such, That if the said J. A. E. Pyle, trustee, shall prosecute said appeal to effect, and answer all damages and costs if he fail
83 to make his plea good, then the above obligation to be void; else to remain in full force and virtue.

(Signed) J. A. E. PYLE, Trustee.
By WM. C. DUFOUR.
His Solicitor and Attorney. [Seal]
(Signed) SOUTHWESTERN SURETY INS. CO. OF OKLA.
By J. H. BODENHEIMER,
Agent & Atty in Fact. [Seal]

Approved by:
(Signed) RUFUS E. FOSTER, Judge.

United States of America.

District Court of the United States, Eastern District of Louisiana.

Clerk's Office:

I, HENRY J. CARTER, Clerk of the District Court of the United States for the Eastern District of Louisiana, do hereby certify, that the foregoing 83 pages contain and form a full, complete, true and perfect transcript of the record, assignment of errors, and proceedings in the case of J. A. E. Pyle, Trustee, vs. Texas Transport & Terminal Company, et als., No. 14,277 of the docket of the said Court, (made in accordance with the Praecipe for the Transcript of Appeal, copied at page 1333 of the Transcript of Appeal in the case entitled as above and numbered 14,240 of the docket of the said Court.)

Witness my hand and the seal of said Court, at the City of New Orleans, Louisiana, this 10th day of July, A. D. 1912.

[Seal] (Signed) H. J. CARTER, Clerk.

That thereafter, the following proceedings were had in said cause in the United States Circuit Court of Appeals for the Fifth Circuit, viz:

Argument and Submission.

Extract from the Minutes of March 20th, 1913.

No. 2393.

J. A. E. PYLE, Trustee in Bankruptcy of Steele, Miller & Company,
versus
TEXAS TRANSPORT & TERMINAL COMPANY, COMPAGNIE GENERALE TRANSATLANTIQUE, and CREDIT HAVRAIS.

On this day this cause was called, and, after argument by William C. Dufour, Esq., for Appellant, and J. P. Blair, Esq., for Appellees, was submitted to the Court.

Opinion of the Court.

Filed April 8th, 1913.

United States Circuit Court of Appeals, Fifth Circuit.

No. 2389.

J. A. E. PYLE, Trustee, etc.,
v.
TEXAS TRANSPORT & TERMINAL CO. et al., and BANK DE MULHOUSE

No. 2390.

J. A. E. PYLE, Trustee, etc.,
v.
TEXAS TRANSPORT & TERMINAL CO. et al., and COMPTOIR D'ESCOMPTE DE MULHOUSE.

No. 2391.

J. A. E. PYLE, Trustee, etc.,
v.
TEXAS TRANSPORT & TERMINAL CO. et al., and PAUL CHARDIN.

No. 2392.

J. A. E. PYLE, Trustee, etc.,
v.
TEXAS TRANSPORT & TERMINAL CO. et al., and SOCIETÉ GENERALE.

No. 2393.

J. A. E. PYLE, Trustee, etc.,
v.
TEXAS TRANSPORT & TERMINAL CO. et al., and CREDIT HAVRAIS.

Appeals from the District Court of the United States, Eastern District of Louisiana.

Before Pardee and Shelby, Circuit Judges, and Sheppard, District Judge.

By the COURT:

The appeals in the above numbered and entitled cases are affirmed on the authority of Lovell v. Newman & Son, 192 F. 753, and Hentz & Co. v. Lovell, Id. 762.

Judgment.

Extract from the Minutes of April 8, 1913.

No. 2393.

J. A. E. PYLE, Trustee in Bankruptcy of Steele, Miller & Company,
versus
TEXAS TRANSPORT & TERMINAL COMPANY, COMPAGNIE GENERALE TRANSATLANTIQUE, and CREDIT HAVRAIS.

This cause came on to be heard on the transcript of the record from the District Court of the United States for the Eastern District of Louisiana, and was argued by counsel;

On consideration whereof, It is now here ordered, adjudged and decreed by this Court, that the decree of the said District Court, in this cause, be, and the same is hereby affirmed;

It is further ordered, adjudged and decreed that the Appellant, J. A. E. Pyle, Trustee in Bankruptcy of Steele, Miller & Company, and the surety on the appeal bond herein, Southwestern Surety Insurance Company of Oklahoma, be condemned, in solido, to pay the costs of this cause in this court, for which execution may be issued out of said District Court.

Petition for Rehearing.

Filed May 5th, 1913.

United States Circuit Court of Appeals, Fifth Circuit.

No. 2393.

J. A. E. PYLE, Trustee,
versus
TEXAS TRANSPORT & TERMINAL COMPANY et als.

Application for Rehearing.

The petition of J. A. E. Pyle, trustee, appellant in the above entitled cause, represents:

That there is error to petitioner's prejudice in the decree rendered by this Honorable Court in this cause affirming the decree from

which petitioner's appeal was prosecuted and for specification of error, petitioner says:

That the decree is based upon the authority of the cases of Lovell, Trustee, v. Isidore Newman, and Hentz v. Lovell, reported in 193 F., p. 753.

It is respectfully submitted that the issue involved in the present suit is separate and distinct from the issues involved and presented in the case under authority of which the Court has affirmed this decree, in that the cases cited invoked solely the issue of appropriation of property, while in the instant case, the Court had before it a direct charge of giving and receiving an unfair preference within the intendment of the Bankruptcy Statute, which issue was neither presented nor decided in the Lovell or Hentz cases; that, therefore, the authority cited cannot be held to control the present case.

Wherefore, petitioner prays that a rehearing may be granted in this cause, and that upon such hearing, the judgment appealed from be reversed and that judgment be rendered in favor of petitioner, granting the relief prayed for.

(Signed) WM. C. DUFOUR,
(Signed) H. GENERES DUFOUR,
Solicitors for Appellant.

The undersigned hereby certifies that he is one of the solicitors for J. A. E. Pyle, trustee, appellant in the above entitled and numbered cause, and that in his opinion the foregoing petition for rehearing is well founded in law.

(Signed) WM. C. DUFOUR.

Order Denying Rehearing.

Extract from the Minutes of June 2nd, 1913.

No. 2393.

J. A. E. PYLE, Trustee in Bankruptcy of Steele, Miller & Company,
versus
TEXAS TRANSPORT & TERMINAL COMPANY, COMPAGNIE GENERALE TRANSATLANTIQUE, and CREDIT HAVRAIS.

Ordered that the petition for rehearing, filed in this cause, be, and the same is hereby denied.

Petition for Appeal, and Order.

Filed July 3d, 1913.

United States Circuit Court of Appeals, Fifth Circuit.

No. 2393.

J. A. E. PYLE, Trustee,
versus
THE TEXAS TRANSPORT & TERMINAL COMPANY et als.

The petition of J. A. E. Pyle, Trustee of Steele, Miller & Company, Bankrupts, with respect shows:

That the above entitled cause is now pending in the United States Circuit Court of Appeals for the Fifth Circuit and that a decree has herein been rendered on the 8th day of April, 1913, affirming the judgment of the District Court of the United States for the eastern district of Louisiana; and that the matter in controversy in said suit exceeds Three Thousand Dollars, ($3000), besides interest and costs, and that the jurisdiction of none of the said Courts, is or was invoked, nor is or was dependent upon the opposite parties to the suit or controversy being aliens or citizens of the United States or citizens of different states; and that this cause does not arise under the patent laws nor the copyright laws, nor the revenue laws, nor the criminal laws, of the United States and that it is not an admiralty case and that it is a proper cause to be reviewed by the Supreme Court of the United States upon appeal.

Therefore, your petitioner respectfully prays that an appeal with supersedeas be allowed in the above cause, and that the Clerk of the United States Court of Appeals for the Fifth Circuit be directed to send the record and proceedings in said cause, with all things concerning same, to the Supreme Court of the United States in order that the errors complained of in the assignment of errors herein filed by said appellant may be reviewed and if error be found corrected according to the laws and customs of the United States.

(Signed) WM. C. DUFOUR,
(Signed) H. GENERES DUFOUR,
Solicitors.

Order.

The foregoing petition is granted and the appeal allowed as prayed for upon appellant giving bond according to law in the sum of $250.00.

July 2d, 1913.

(Signed) DON A. PARDEE, *Judge.*

Assignment of Errors.

Filed July 3d, 1913.

United States Circuit Court of Appeals, Fifth Circuit.

No. 2393.

J. A. E. PYLE, Trustee,
versus
TEXAS TRANSPORT & TERMINAL COMPANY et als.

And now comes J. A. E. Pyle, Trustee in Bankruptcy of Steele, Miller & Company, Bankrupts, appellant, through William J. Lamb, William C. Dufour and H. Generes Dufour, his solicitors, and says that in the record and proceedings aforesaid in the United States Circuit Court of Appeals for the Fifth Circuit in the above entitled cause and in the rendition of the final decree therein manifest error has intervened to the prejudice of said appellant in this, to-wit:

(1) The United States Circuit Court of Appeals for the Fifth Circuit erred in affirming the decree of the United States District Court for the Eastern District of Louisiana.

(2) The said United States Circuit Court of Appeals for the Fifth Circuit erred in not reversing the said decree of the United States District Court for the Eastern District of Louisiana.

(3) The said United States Circuit Court of Appeals for the Fifth Circuit erred in failing to sustain appellant's Assignment of Error No. 4 upon the record of said case, as follows:

"That the Court erred in holding by delivering the actual cotton to the carriers, Steele, Miller & Company intended to appropriate and did appropriate said cotton to the fraudulent bills of lading acquired and held by defendant."

(4) The said United States Circuit Court of Appeals for the Fifth Circuit erred in failing to sustain appellant's Assignment of Error No. 5 upon the record of said case as follows:

"The Court erred in holding that the defendant bank was in fact a purchaser of actual cotton from Steele, Miller & Company."

(5) The said United States Circuit Court of Appeals for the Fifth Circuit erred in failing to sustain appellant's Assignment of Error No. 6 upon the record of said case, as follows:

"The Court erred in failing to find and hold that the defendant knew or ought to have known or had reasonable grounds to believe that Steele, Miller & Company were insolvent at the time the defendant received the genuine bills of lading representing cotton actually shipped referred to in the bill of complaint."

(6) The said United States Circuit Court of Appeals for the Fifth Circuit erred in failing to sustain appellant's Assignment of Error No. 7, upon the record of said case as follows:

"The Court erred in failing to find and hold that Steele, Miller & Company, by delivering the genuine bills of lading to the defendant representing cotton actually shipped, thereby intended to prefer and did prefer said defendant to and over its other creditors,

and thereby intended to grant and did grant an illegal and unfair preference to the defendant, and that the defendant did receive a preference within the meaning and intendment of the bankrupt statute of the United States."

Wherefore, said J. A. E. Pyle, Trustee, as aforesaid, prays that for the errors aforesaid and other errors appearing in the record of said United States Circuit Court of Appeals for the Fifth Circuit in the above entitled cause to the prejudice of the appellant, said decree of the United States Circuit Court of Appeals for the Fifth Circuit be reversed and annulled and that said cause be remanded to the United States District Court for the Eastern District of Louisiana, with instructions to set aside the decree heretofore rendered in the trial of this cause and commanding a new trial for same and such other proceedings in said cause as may be determined upon by this Honorable Court to the end that justice may be obtained in the premises.

(Signed) WM. C. DUFOUR,
(Signed) H. GENERES DUFOUR,
Solicitor-.

Bond on Appeal.

Filed July 7th, 1913.

J. A. E. Pyle, Trustee in Bankruptcy of Steele, Miller & Company, vs. The Texas Transport and Terminal Company, Compagnie Generale Transatlantique, and Credit Havrais.

Know all men by these presents, that we, J. A. E. Pyle, Trustee in Bankruptcy of Steele, Miller & Company, as Principal and Southwestern Surety Insurance Company as Surety are held and firmly bound unto The Texas Transport and Terminal Company, Compagnie Generale Transatlantique and Credit Havrais in the sum of Two Hundred and Fifty Dollars, ($250.00), to be paid to the said, The Texas Transport and Terminal Company, Compagnie Generale Transatlantique and Credit Havrais; we bind ourselves and each of our heirs, executors, and administrators, jointly and severally, firmly by these presents.

Sealed with our seals and dated the 3rd day of July, A. D. 1913.

Whereas the Appellant in the above entitled suit has prosecuted an appeal to the Supreme Court of the United States to reverse the decree rendered and entered in said cause in the Circuit Court of Appeals for the Fifth Circuit on the 8th day of April, 1913.

Now, therefore, the condition of this obligation is such that if the said appellant shall prosecute said appeal to effect and answer all damages and costs if he fails to make said appeal good, then this obligation shall be void; otherwise to remain in full force and virtue.

(Signed) J. A. E. PYLE, *Trustee,*
By W. C. DUFOUR, *Solicitor.*
(Signed) SOUTHWESTERN SURETY INSURANCE CO. OF OKLAHOMA, [SEAL.]
By J. H. BODENHEIMER,
Agent & Attorney-in-Fact.

The foregoing bond is approved this 4th day of July, A. D. 1913.

(Signed) DON A. PARDEE,
United States Circuit Judge, Fifth Circuit.

Clerk's Certificate.

UNITED STATES OF AMERICA:

United States Circuit Court of Appeals, Fifth Circuit.

I, Frank H. Mortimer, Clerk of the United States Circuit Court of Appeals for the Fifth Circuit, do hereby certify that the pages numbered from 66 to 82 next preceding this certificate contain full, true and complete copies of all the pleadings, record entries and proceedings, including the opinion of the United States Circuit Court of Appeals for the Fifth Circuit, in a certain cause in said Court, numbered 2393, wherein J. A. E. Pyle, Trustee in Bankruptcy of Steele, Miller & Company, is Appellant, and The Texas Transport & Terminal Company, Compagnie General Transatlantique, and Credit Havrais are Appellants, as full, true and complete as the originals of the same now remain in my office.

I further certify that the pages of the printed record numbered from 1 to 65 are identical with the printed record upon which said cause was heard and decided in the said Circuit Court of Appeals.

In testimony whereof I hereunto subscribe my name and affix the seal of the said Circuit Court of Appeals, at my office in the City of New Orleans, Louisiana, in the Fifth Circuit, this 10th day of July, A. D. 1913.

[Seal United States Circuit Court of Appeals, Fifth Circuit.]

FRANK H. MORTIMER,
Clerk of the United States Circuit Court of Appeals.

THE UNITED STATES OF AMERICA:

The President of the United States to The Texas Transport and Terminal Company, Compagnie Generale Transatlantique and Credit Havrais, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States at Washington, D. C., within thirty (30) days from the date hereof, pursuant to a petition and order of appeal sued out and filed in the Clerk's Office of the United States Circuit Court of Appeals for the Fifth Circuit, in the cause wherein J. A. E. Pyle, Trustee in Bankruptcy of Steele, Miller & Company, is Appellant and The Texas Transport and Terminal Company, Compagnie Generale Transatlantique and Credit Havrais are Appellees, to show cause, if any there be, why the decree rendered against the said J. A. E. Pyle, Trustee in Bankruptcy of Steele, Miller & Company and in said petition and order of Appeal mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness, the Honorable Edward Douglass White, Chief Justice of the United States, this 4th day of July in the year of our Lord one thousand nine hundred and thirteen.

New Orleans, July 9, 1913.

DON A. PARDEE,
United States Circuit Judge.

Service accepted,

DENEGRE & BLAIR,
Sol'rs for Credit Havrais.
GEO. H. TERRIBERRY,
Sol. for Tex. Tr. & Term. Co. & Compagnie Générale Transatlantique.

[Endorsed:] No. 2393. United States Circuit Court of Appeals, Fifth Circuit. J. A. E. Pyle, Trustee in Bankruptcy of Steele, Miller & Co., Appellant, vs. Texas Transport & Terminal Company, Compagnie Generale Transatlantique, and Credit Havrais, Appellees. Citation. U. S. Circuit Court of Appeals. Filed Jul- 10, 1913. Frank H. Mortimer, Clerk.

Endorsed on cover: File No. 23,811. U. S. Circuit Court Appeals, 5th Circuit. Term No. 230. J. A. E. Pyle, Trustee in bankruptcy of Steele, Miller & Company, Appellant, vs. The Texas Transport & Terminal Company, Compagnie Generale Transatlantique and Credit Havrais. Filed August 1st, 1913. File No. 23,811.

Office Supreme Court, U.
FILED
MAR 15 1915
JAMES D. MAHER
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SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1914.

No. 230.

J. A. E. PYLE, Trustee in Bankruptcy of STEELE, MILLER & COMPANY, Appellant,

vs.

THE TEXAS TRANSPORT & TERMINAL COMPANY, COMPAGNIE GENERALE TRANSATLANTIQUE, and CREDIT HAVRAIS.

Memorandum Brief for Appellees.

The above-entitled appeal and appeals numbers 226, 227, 228 and 229 were tried, argued and decided together, both in the District Court and in the Court of Appeals. They present the same general questions of law and of fact. The evidence is the same in each case; that is to say, the evidence taken in one case was by stipulation deemed to be taken in all the other cases, and has been included in only one of the transcripts of record, that of Cause No. 226. The cases illustrate and explain each other, so that they may be more conveniently discussed and more readily understood when presented and considered together. We have, therefore, covered all the cases in one brief and argument, filed in No. 226. To that brief we now beg leave to refer the Court, and for the reasons therein stated, we ask that the judgment appealed from be affirmed.

Respectfully submitted,

GEORGE DENÈGRE,
JOSEPH PAXTON BLAIR,
VICTOR LEOVY,
Of Counsel for Appellees.

Office Supreme Court, U. S.
FILED
APR 3 1915
JAMES D. MAHER
CLERK

Supreme Court of the United States

October Term, 1914.

No. 230.

J. A. E. PYLE, TRUSTEE IN BANKRUPTCY OF STEELE, MILLER & COMPANY, Appellant,

versus

THE TEXAS TRANSPORT & TERMINAL COMPANY, COMPAGNIE GENERALE TRANSATLANTIQUE, AND CREDIT HAVRAIS.

MEMORANDUM BRIEF FOR APPELLANTS.

As stated in the memorandum filed by the appellee, the above entitled appeal and appeals numbers 226, 227, 228 and 229 were tried, argued and decided together both in the District Court and in the Circuit Court of Appeals. We also have covered all of the cases in one brief, filed in Number 226.

We ask for the same relief as has been asked for in that case and for the reasons stated in that brief.

Respectfully submitted,

W. J. LAMB,

WM. C. DUFOUR,

H. GENERES DUFOUR,

GEORGE JANVIER,

Of Counsel for Appellants.

PYLE, TRUSTEE IN BANKRUPTCY OF STEELE, MILLER & COMPANY, *v.* TEXAS TRANSPORT & TERMINAL COMPANY.

APPEALS FROM THE CIRCUIT COURT OF APPEALS FOR THE FIFTH CIRCUIT.

Nos. 226, 227, 228, 229, 230. Argued April 16, 19, 1915.—Decided June 1, 1915.

Whether the one receiving property from the bankrupt before the petition has cause to believe that he was receiving, and that it was intended to give to him, a preference is a matter of fact, and in an action to recover the property the burden of proof is upon the trustee.

In this case, parties who had advanced money on forged bills of lading in the belief that they represented the goods actually moving from designated points of shipment and had, just before the petition, received from the bankrupt genuine bills of lading representing the same goods, physical possession of which was in the carriers issuing the genuine bills, were entitled to possession of the goods; and, under the circumstances of this case, the substitution of the genuine, for the false, bills did not amount to an illegal preference under the Bankruptcy Act.

203 Fed. Rep. 1023, affirmed.

THE facts, which involve the right of a trustee in bankruptcy to maintain an action for the recovery of property of the bankrupt and what constitutes a preference under that Act, are stated in the opinion.

Mr. Wm. C. Dufour, with whom *Mr. W. J. Lamb*, *Mr. H. Generes Dufour* and *Mr. George Janvier*, were on the brief, for appellant:

The preference was an unfair one.

The French bankers considered conditions abnormal. The time of preference and the relations of Scheuch & Co. show that there was a preference.

The whole cotton world had been placed on guard by Knight, Yancey failure.

"Kiting," such as occurred in this case, is first sign of insolvency.

The security given up was worthless and the substitution of good security amounted to a preference.

In support of these contentions, see *Alexander* v. *Redmond*, 180 Fed. Rep. 96; 24 Am. & Eng. Enc. 1066; *The Carlos F. Roses*, 177 U. S. 671; *Coleman* v. *Decatur Egg Co.*, 186 Fed. Rep. 136; 2 Cyc. 565; *First Natl. Bank* v. *Abbott*, 165 Fed. Rep. 853; *Forbes* v. *Howe*, 3 A. B. R. 475; *S. C.*, 102 Massachusetts, 427; *In re Gesas*, 146 Fed. Rep. 734; *Great Western Mfg. Co.*, 152 Fed. Rep. 123; *Hentz* v. *Lovell*, 192 Fed. Rep. 762; *Re Hoghton Web Co.*, 185 Fed. Rep. 213; *Hoover* v. *Maher*, 51 Minnesota, 53; *Lewis* v. *Julius*, 212 Fed. Rep. 225; *Lovell* v. *Newman*, 192 Fed. Rep. 753; *Re Manning*, 123 Fed. Rep. 180; *Re McDonald*, 178 Fed. Rep. 487; *Obiter Iron Co.* v. *Rolling Mill Co.*, 125 Fed. Rep. 794; *Parker* v. *Black*, 143 Fed. Rep. 561; *Re Reese Brick Co.*, 131 Fed. Rep. 643; Remington on Bankruptcy, page 774; *The St. Jose Indiano*, 1 Wheat. 208; *Sawyer* v. *Turpin*, 91 U. S. 114, 120; *Soisson* v. *First Nat'l Bank*, 131 Fed. Rep. 643; *Stewart* v. *Platt*, 101 U. S. 731; *Re Deuschle*, 182 Fed. Rep. 435; *Re Virginia Hardwood Co.*, 139 Fed. Rep. 209.

Mr. Victor Leovy, with whom *Mr. George Denegre* and *Mr. Joseph Paxton Blair* were on the brief, for appellees.

MR. JUSTICE MCREYNOLDS delivered the opinion of the court.

These causes, begun at the same time, were tried and decided together in the United States District Court, Eastern District of Louisiana (192 Fed. Rep. 725), and also in the Circuit Court of Appeals (203 Fed. Rep. 1023).

The original bills, except as to details concerning times, amounts, etc., are essentially identical; by stipulation the evidence in each one became part of the record in the others; and all the appeals may be conveniently considered in a single opinion.

The proceedings were instituted August 18, 1910, by Pyle, Trustee in bankruptcy of Steele, Miller & Company, to recover 2,494 bales of cotton in custody of an ocean carrier at New Orleans, transfer of which by the bankrupts to appellee banks, acceptors of their twenty-five drafts aggregating $183,048.46 it is alleged, constituted a preference voidable under §§ 60-*a* and 60-*b* of the Bankrupt Law (c. 541, 30 Stat. 544, 562) as it stood after amendments of February 5, 1903 (c. 487, 32 Stat. 797, 799, 800), and prior to June 25, 1910 (c. 412, 36 Stat. 838, 842). These sections are copied in the margin.[1]

Steele, Miller & Company were merchants at Corinth, Mississippi, engaged in exporting cotton. Scheuch & Company were merchants and importers domiciled at

[1] Sec. 60-*a*. A person shall be deemed to have given a preference if, being insolvent, he has, within four months before the filing of the petition, or after the filing of the petition and before the adjudication, procured or suffered a judgment to be entered against himself in favor of any person, or made a transfer of any of his property, and the effect of the enforcement of such judgment or transfer will be to enable any one of his creditors to obtain a greater percentage of his debt than any other of such creditors of the same class. Where the preference consists in a transfer, such period of four months shall not expire until four months after the date of the recording or registering of the transfer, if by law such recording or registering is required.

Sec. 60-*b*. If a bankrupt shall have given a preference, and the person receiving it, or to be benefited thereby, or his agent acting therein, shall have had reasonable cause to believe that it was intended thereby to give a preference, it shall be voidable by the trustee, and he may recover the property or its value from such person. And, for the purpose of such recovery, any court of bankruptcy, as hereinbefore defined, and any state court which would have had jurisdiction if bankruptcy had not intervened, shall have concurrent jurisdiction.

Havre, France. The Bank de Mulhouse, Comptoir D'Escompte de Mulhouse, Societe Generale, and Credit Havrais are French banks doing business at Havre; and Paul Chardin is a banker and cotton merchant of that city. The Compagnie Generale Transatlantique is an ocean carrier. It owned the steamship *Texas;* and Texas Transport & Terminal Company was its agent at New Orleans.

In 1909 the bankrupts engaged to consign large quantities of cotton to Scheuch & Company for sale, and the latter on their own responsibility arranged for reimbursement credits with the banks, who, according to established trade custom, undertook to accept drafts drawn on themselves by consignors for value of shipments when accompanied by proper bills of lading, insurance papers, etc.—"all necessary documents." In the honest course Steele, Miller & Company delivered 100 bales of cotton to a railroad carrier for through shipment to Havre taking therefor a bill of lading to their own order containing marks, number of bales, etc., and direction to notify Scheuch & Company. The bill with accompanying documents was then annexed to a draft for the consignment's approximate market price, addressed to the Havre bank and specifying (marks being changed to meet the circumstances) "value received and charge to account R. D. A. R. 1/100 bales cotton." This was discounted and ultimately accepted and paid. Upon arrival at Havre the drawee bank received and held the cotton until reimbursed by Scheuch & Company.

Finding themselves in financial difficulties Steele, Miller & Company prior to September, 1909, began to forge and use through railroad bills of lading resembling genuine ones in all respects. Having utilized one of these to procure discount of a draft they would thereafter assemble 100 bales marked with a combination of four letters identically as designated in the false instrument, forward

these to New Orleans, and there deliver them to an ocean carrier receiving a port or ocean bill of lading to their own order bearing the same identifying marks, etc. The genuine bill would then be sent by mail to Scheuch & Company with instructions to deliver to the bank holding corresponding forged one and return the latter. Such requested exchanges were made through a considerable period, the banks having been satisfied by a plausible explanation that bankrupts had made some arrangement with the carriers and that shipments were thus expedited, given through Scheuch & Company who, although at first ignorant of the frauds, were fully informed as early as March, 1910.

During December, 1909, and January and February, 1910, the bankrupts drew the twenty-five drafts—each for about $7,300, approximate market value of 100 bales—here involved on the separate appellee banks, attaching to each a fictitious through railroad bill of lading; and in due course these were accepted and paid in entire good faith. Prior to April 6, 1910, while insolvent, the bankrupts assembled in Mississippi and Tennessee the number of bales specified by the several forged bills marked as therein stated, shipped them to New Orleans and there delivered them to the Compagnie Generale Transatlantique for transportation to Havre. The ocean carrier issued to bankrupts for each 100 bales a port or ocean bill with same marks, etc., and placed cotton aboard the *Texas*. The bankrupts promptly endorsed the genuine bills and forwarded them by mail to Scheuch & Company with directions to deliver to banks holding corresponding fictitious ones and return the latter. Deliveries were made in Havre on April 26, May 3 and May 7; but because of disquieting rumors concerning wrongful practices by others the banks retained both forged and genuine documents. They had no actual knowledge of the frauds practiced upon them until May 8, when information was received

concerning the receiver's bill filed during the preceding day.

About April 20, 1910, the failure of Knight, Yancey & Company & Company, large exporting cotton merchants at Decatur, Alabama, was announced, and shortly thereafter wide publicity was given to the fact that they had made extensive use of forged through railroad bills of lading with foreign drafts. Steele, Miller & Company suspended payment April 29; bankruptcy proceedings were instituted against them May 4; removal from New Orleans of cotton covered by the above-described ocean bills was enjoined in a proceeding by the receiver filed May 7; and on August 18 the instant causes were begun.

The bill in No. 226 (typical of all) alleges—"Steele, Miller & Company, being then insolvent, with intent to prefer said Bank of Mulhouse or Scheuch & Company, or both of them, over their other creditors, did deposit in the United States mail the said port bills of lading, the said bills of lading being addressed to Scheuch & Company, and the same having been endorsed by Steele, Miller & Company, the object and purpose of forwarding said port bills of lading being to substitute the same for the forged and worthless bill or bills of lading attached to the drafts held by the said Bank of Mulhouse or Scheuch & Company, or both of them, and that said port bills of lading in due course were received by Scheuch & Company and delivered to the Bank of Mulhouse. . . . Your orator avers that the transmission of said port bills of lading to be substituted for the said fraudulent bills of lading was done with the intent to prefer the said Bank of Mulhouse, and that when the said bills of lading were mailed to the said Scheuch & Company for delivery to the Bank of Mulhouse, and were received by the said Scheuch & Company and delivered to the Bank of Mulhouse, the said Scheuch & Company and the said Bank of Mulhouse, in accepting the said bills of lading and permitting the sub-

stitution of the said valid and port or custody bills of lading for the worthless bills of lading then held, knew or should have known and had reasonable cause to believe, that a preference was thereby given and intended, and knew or should have known that Steele Miller & Company was at said time insolvent, and that the effect of the mailing, the receipt and acceptance and substitution of said bills of lading was to enable the said Scheuch & Company or the said Bank of Mulhouse to obtain payment of its said draft; and your orator now charges that the effect of the act hereinabove described, if maintained and permitted by this Honorable Court, will be to enable the said Bank of Mulhouse or Scheuch & Company, or both of them, to obtain a greater per cent. of their said debt than any other creditor of said bankrupt, and that such acts should be set aside. Your orator charges the acts hereinabove complained of were performed within four months prior to the filing of the petition of involuntary bankruptcy herein, and your orator is advised that the act or acts complained of are voidable at his election, and he does now elect to avoid the same and files this his bill to avoid said transfor." And it prays "that upon the final hearing of this bill this Court will set aside the transfer of the said 900 bales of cotton by the said bankrupt to the said Bank of Mulhouse or Scheuch & Company, or both of them, and hold the same void and of no effect, and decree that the title to the said cotton and the right of possession thereof is in your orator and will permit your orator to take possession of said cotton and administer the same, or the proceeds thereof, for the benefit of the creditors." . . .

Appellant trustee maintains that he is seeking to set aside a preference as authorized by statute; that the French banks became mere ordinary unsecured creditors of Steele, Miller & Company by paying drafts with forged bills of lading attached as security; and that when genuine bills were substituted for spurious ones these banks had

positive information of the bankrupts' insolvency and knew or should have known that they were receiving an intended preference.

In behalf of appellee banks it is insisted that the transactions between them and bankrupts were in the nature of sales and by marking and shipping the cotton before bankruptcy it was appropriated to the contracts; that bankrupts had no purpose to give a preference; and certainly the banks had no reasonable cause to believe they were receiving an intended preference.

The trial judge, relying upon *"The Idaho,"* 93 U. S. 575, held the cotton was appropriated before bankruptcy to prior contracts between the parties. He further said: "I am not convinced that Steele, Miller & Company intended a preference, as it seems to me they uniformly discounted drafts purporting to be secured by bills of lading for cotton, which were in reality forged, and thereafter shipped the cotton to prevent discovery of their dishonest methods, and that their transactions with the bank were in the usual course of business and without any intention on their part other than to conceal their true methods. Furthermore, while the facts on which they might be charged with notice ought to have excited the suspicion of the bank, I am not prepared to say that they had knowledge, constructive or actual, of Steele, Miller & Company's insolvency, or that a preference was intended." The bill was accordingly dismissed and the Circuit Court of Appeals affirmed this action upon authority of *Lovell* v. *Newman & Son*, 192 Fed. Rep. 753, and *Hentz & Co.* v. *Lovell*, 192 Fed. Rep. 762.

Admitting that title to the cotton in question passed, the trustee now seeks annulment of the consummated transfer because a preference would result therefrom. In *Lovell* v. *Newman & Son, supra*, recovery was asked upon the theory that the title had remained in the bankrupts. By the statute's very words in order to set aside such a

transfer and recover the property it must appear that "the person receiving it, or to be benefited thereby, or his agent acting therein, shall have had reasonable cause to believe that it was intended thereby to give a preference." Whether such "reasonable cause to believe" existed is a question of fact and the burden of proof is upon the trustee. *Coder* v. *Arts*, 213 U. S. 223, 240; *Wright* v. *Sampter*, 152 Fed. Rep. 196, 198; *McNaboe* v. *Columbian Mfg. Co.*, 153 Fed. Rep. 967, 968; *Tumlin* v. *Bryan*, 165 Fed. Rep. 166, 167, 168; *Reber* v. *Shulman*, 183 Fed. Rep. 564, 565; *Kimmerle* v. *Farr*, 189 Fed. Rep. 295, 299–300; *Mayes* v. *Palmer*, 208 Fed. Rep. 97, 98, 101.

Considering the whole record we are unable to conclude that appellee banks had reasonable cause to believe that by transferring the genuine bills of lading to them a preference was intended or given; and accordingly without undertaking to decide other interesting questions raised we must affirm the decree of the court below. Prior to May 8, 1910, the banks thought the forged bills in their keeping represented cotton actually moving from designated points of shipment. They were unaware of the bankrupts' crimes; and in the circumstances we cannot say they either believed or ought to have believed that they were receiving anything more than new receipts for their own property physical possession of which had passed during transit from a responsible railroad to a trustworthy steamship company.

Affirmed.